THE EMPLOYMENT RELATIONSHIP
(Scope)

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(IRELAND)

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PRELIMINARY COMMENTS

The Irish industrial relations system is based upon a social partnership model. Every three years the Government, representatives of the trade union movement, of employers' organisations and more recently also drawn from the non-governmental 'social pillar' (i.e. voluntary groups) come together to negotiate a national agreement which fixes wage increases and other payments generally. The agreement also sets a framework for a wide range of government policies, ranging from, for example, education to national infrastructural development. The most recent of these is the Programme for Prosperity and Fairness (PPF).

In the context of the negotiations on this Programme, it was agreed to set up an Employment Status Group, a committee tasked with devising a uniform definition of 'employees'. The Group was set up because of a growing concern about a possible increase in the numbers of individuals described as 'self-employed', when in fact the status of employee would be more appropriate. The findings and conclusions of this Group contained in their Report, and in the Code of Practice in Determining Employment Status drawn up by the Group in July 2001, have been of immense assistance to us in attempting to answer the questions in this survey. Copies of the Report and the Code are attached in the Appendix to this document.

However, in attempting to complete the survey, we have also been confronted with a number of difficulties, mainly relating to quantitative and qualitative issues to do with the growth of new forms of employment or to disguised or ambiguous employment.

The Irish Central Statistics Office (CSO), which is the main source of data on Irish employment trends, does not identify in any way non-standard forms of employment or self-employment. Quarterly figures from the Central Statistics Office only categorize the workforce as between self-employed and employed. The employed category is further broken down as between fulltime and part-time workers. The figure for part-time workers currently

stands at 16.5% of the workforce, up from 9% ten years ago. This growth, however, is largely attributable to the growth in female participation in the labour force, which now stands at 47.5%.

The figure for the self-employed is a catch-all category which includes both self-employed who work on their own and those who have employees. Out of a total workforce of 1,716,500 there is a total of 291,900 self employed, around 17%. This figures includes farmers. Of the 291,900 some 101,100 have paid employees while 190,800 have no paid employees. There is no further breakdown in the self-employed figures as between traditional liberal professions (lawyers, doctors, accountants etc.) and more recent forms of self-employment such as consultants, information technology contractors, media freelancers etc. It is therefore impossible to say whether the growth in those who are self-employed is merely a reflection of the 50% increase in the numbers employed in the Irish labour force over the past ten years (from 1,149,000 in 1991 to 1,716,500 in 200) or whether it reflects some other trend. There is no sectoral breakdown of the distribution of the self-employed which further compounds the difficulty of any form of reliable analysis.

This absence of reliable data makes the identification of problems (if any) difficult and would seem to us to be a major lacuna in Irish official statistics. While commentators continue to talk about more flexible labour markets it is impossible, in Irish terms, to say with any degree of certainty how much new forms of employment have taken hold.

Nor is there any evidence that there has been a qualitative change in the nature of independent work in Ireland in recent years. As already said, the growth in the number of independent workers is broadly a reflection of the overall growth in the numbers employed in the Irish labour market. There is no data to suggest that there has been a surge in independent work as a way of employers avoiding employment regulations. Compared to many other European countries Ireland has traditionally had a relatively lightly regulated work rgime, though this is now changing as a result of the growth in European Union employment law. In so far as there has been any growth, anecdotal evidence would suggest that the main reason for it is to minimise tax and social security payments. The growth in such disguised work is primarily in the information technology sector where skilled employees are in demand and

can command high daily rates. By setting up as self-employed or as small, one-person businesses they hope to minimize tax and social security payments.

Employers are responsible for deducting tax and social insurance payments from their employees' wages at source. This system is known as 'PAYE' tax (pay as you earn) and 'PRSI' social insurance (pay-related social insurance). Those who are self-employed are responsible for making their own tax payments and social insurance contributions. They may also be liable for paying VAT (value added tax) if they earn over a certain amount. Compliance with tax obligations is enforced by the Revenue Commissioners, while compliance with social welfare laws is enforced by the Social Welfare deciding and appeals officers. Anecdotally, we are aware that many workers actively favour the self-employed status as they may avoid paying tax more easily that way. As noted earlier, there really only ever has been two forms of employment status in Ireland, employed or self-employed. The term 'worker' does not have any legal meaning, nor is it referred to in legislation, but it may be used in a general sense to denote members of both categories.

Those within the category of employed persons or employees are deemed to work under a 'contract of employment' (originally called a 'contract of service'), ie a legally binding and enforceable agreement between employer and employee. Thus, the contract forms the basis for the employment relationship, and contract rules govern employment relationships. Most employment protection legislation only covers those persons who work under contracts of employment, and income tax is deducted from their wages at source by the employer. Those who are self-employed do not possess a contract of employment, but rather may be seen as selling their services to other persons through contracts for services. Nor are they protected generally by employment protection legislation. Income tax is not deducted at source in respect of the fees they charge for their services, and they are liable to make their own arrangements for paying taxes.

Concern over whether some of those claiming (or being assigned by employers) the status of self-employed were in reality self-employed led the Social Partners and Government to set up a working group to look at the issue, as mentioned above. They did so primarily from a legal perspective (their report provides no data on statistical trends). The Report produced by the Group, and attached in the Appendix, sets out a definition of a self-employed person as

someone who:

- Owns his or her own business
- Is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract
- Assumes responsibility for investment and management in the enterprise
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally
- Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken
- Can provide the same services to more than one person or business at the same time
- Provides the materials for the job
- Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account
- Has a fixed place of business where materials equipment etc. can be stored
- Costs and agrees a price for the job
- Provides his or her own insurance cover e.g. public liability etc.
- Controls the hours of work in fulfilling the job obligations.

If these criteria are not met clearly, then the person will be classified as an employee.

One of the questions addressed in the questionnaire is whether or not a new category of worker, somewhere between self-employed and employed, perhaps to be defined as economically-dependent, should be created. It seems to us that the creation of such a new category would be ill-advised in the Irish context and would simply result in confusion and uncertainty. Workers in such an intermediate category would probably have, in reality, none of the flexibility of the self-employed nor the legal protections of the employed. In our view, it would be better to rigidly apply the criteria on self-employed set out above and to ensure that workers are clearly either self-employed or employed.

There has been one significant development affecting independent workers in recent years. A number of groups, for example freelance journalists, who traditionally negotiated minimum terms and conditions through their trade union with the relevant employers' organization, have been deemed to be self-employed and therefore covered by the Competition Acts. As such, collective negotiations are deemed to constitute price fixing and may therefore be found to be illegal. This development deprives these workers of the ability to negotiate collectively. However, it should be said that this problem arises from the ambiguity of the status of such workers and could easily be addressed on the basis set out in the preceding paragraph.

In Ireland, workers have a constitutional right to form trade unions and have the right to join them. An employer who dismisses an employee for joining a trade union is automatically guilty of an unfair dismissal.

However, an employer is under no legal obligation to recognize or negotiate with a trade union and can simply refuse to do so. The case law in this regard is well established.

The Irish Constitution in Article 40.6.1(iii) guarantees:
"The right of citizens to form associations and unions'

This constitutional right has been held, in *Educational Company v. Fitzpatrick [1961] IR 323*, for example, to include the right of any citizen not to join associations or unions if they so wish.

The case of *Meskell v CIE [1973] IR 121* held that to try to alter the constitutional rights of an employee retrospectively by enforcing a closed shop agreement on current employees was unconstitutional. This decision did not affect the rights of workers who join an employment which already has a pre-entry closed shop agreement as the employee will know in advance that trade union membership of a particular union is an employment requirement. Such a condition of employment is not regarded as unconstitutional as neither compulsion nor coercion on the employee is involved - though it has to be said that these contentions have not been fully tested in the Courts.

However, the legal situation with regard to trade union recognition is that an employer does not have to recognize or bargain with a union.

In *Abbott and Whelan v ITGWU and the Southern Health Board (1982) 1 JISLL 56,* Mr. Justice McWilliams held that:

"The suggestion…that there is a constitutional right to be represented by a union in the conduct of negotiations with employers…in my opinion could not be sustained. There is no duty placed on an employer to negotiate with any particular citizen or body of citizens."

In 1981, Mr. Justice Hamilton, in *Dublin Colleges ASA v City of Dublin VEC (1982) 1 JISLL 73,* where a number of teachers had formed a new union of their own and sought formal recognition said the plaintiffs naturally had a constitutional right of association:

"But (there is) no corresponding obligation on any body or person, such as the defendants herein, to recognize that association for the purpose of negotiating the terms and conditions of employment of its members, or for any purpose."

The same point had been made in even stronger language by Mr. Justice Walsh in *EI & Company Ltd v Kennedy [1968] IR 69:*

"In law an employer is not obliged to meet anybody as the representative of his workers, nor indeed is he obliged to meet the worker himself for the purpose of discussing any demand which the worker may make."

The position was summarized by the late Professor John Kelly in his authoritative work on the Irish Constitution. According to Professor Kelly:

"The right of association of employees does not imply any duty on an employer beyond respecting the right in itself, and of course discharging his side of any agreement with employees. In particular, it does not oblige him to negotiate with any association which employees may form".

Nevertheless, the Courts have held that disputes over recognition are valid trade disputes. The *Industrial Relations Act 1990* gives disputes over recognition immunity from "action in relation to any torturous act committed by or on behalf of the trade union in contemplation or furtherance of a trade dispute", provided they comply with certain stated statutory requirements.

In an attempt to meet trade union concerns over the ability of employers to avoid union recognition the government recently enacted legislation, the *Industrial Relations (Amendment) Act 2001* came into force on May 31, 2001. It is based on an agreed report from the social partners and relevant state agencies concerned with industrial relations issues. The new legislation gives the Labour Court the power to issue a legally binding ruling on pay and conditions of employment in circumstances in which an employer refuses to recognise a trade union. However, the Court cannot rule that an employer must recognise a trade union. Further, the procedure set out in the Act is long and cumbersome, possibly taking up to two years to complete, and has not yet been tested in practice.

Trade union membership and recognition is an important issue in Ireland, particularly because Irish legislation contains no *erga omnes* provisions whereby collective bargaining agreements are applied across sectors on a binding basis. Therefore, in Ireland, collective bargaining coverage is synonymous with union membership. As union density currently stands at around 40% (broken down as between around 80% in the public sector and 25% in the private sector) this means that around 60% of Irish workers have their pay and conditions unilaterally set by managements, or as a result of individual negotiations.

Further, because of the fact that the Irish Labour Inspectorate (which is seriously understaffed) operates on a reactive basis – i.e. they respond largely to complaints rather than proactively inspecting employers to ensure that employment laws are being adhered to – workers who, in theory, appear to be well protected, in reality may be inadequately protected or not protected at all.

It seems to us that the imminent adoption by the European Union (at the time of writing) of a new Directive on national-level information and consultation, which would require all companies with more than 50 employees to set up structures for informing and consulting

employees, would provide an ideal opportunity to correct some of these workplace deficiencies if transposed into Irish legislation in an imaginative fashion.

In summary, therefore, it is our view that:

- No new definition of a category of worker somewhere between employed and self-employed should be attempted, but instead workers should be clearly defined as being either employed or self-employed, with all the rights and obligations both categories bring;

- Irish statistical data should be refined so as to allow the identification of the distribution of the self-employed as between sectors and categories;

- While the *Industrial Relations (Amendment) Act 2001* is a welcome development, in practice it may not resolve the problem of trade union recognition because of the long-timescales involved;

- An imaginative transposition of the imminent EU Directive on national-level information and consultation could go a long way to providing for a collective employee voice in situations where there is currently no such voice.

QUESTIONNAIRE

- **Dependent work**
- **Independent work**
- **Ambiguous or disguised work**
- **"Triangular" or "multilateral" relationships**

Dependent work

1. The *employment relationship* is

< based upon the common law (ie judge-made law) concept of the contract. A contract of employment must have three elements:
< offer - the offer of work on certain terms and conditions
< acceptance - the employee's agreement to do the work under those conditions
< consideration - the exchange of pay for the employee's promise to work.....
< A Contract of Employment can be verbal or written, or a combination of both.
<
< The Contract comes into existence when agreement is reached between employer and employee, when the offer of employment by the employer is accepted by the employee. Accordingly every employee has a Contract of Employment. The details of a Contract of

Employment are referred to as its terms. Both the Common Law and Statute however recognise that all contracts of employment should contain basic terms and obligations particularly basic protections for employees. Such basic terms are included in each Contract of Employment whether expressly agreed between employer and employee or not, they are implied into each Contract of Employment. The parties are of course free to agree any terms suitable to the particular employment and to agree terms, which go beyond the minimum legal protections. It is also common practice, particularly in employments where there is Trade Union representation for the parties to conclude a Collective Agreement - an Agreement regarding terms, conditions, work practices and rules of employment, which applies to all employees in membership of the Union. In order to bind the individual employee the Collective Agreement must be specifically incorporated into the Contract of Employment of each employee**.**

In the past, another type of employment relationship was deemed to exist where a person was working for the State in the civil service, for example. Such a person was regarded as holding 'office', ie their status was not that of employee but rather of 'office-holder'. They were seen as holding office at the will of the Executive (the Government), which could thus dismiss them at will. The only constraint on the power to dismiss at will was that the Government had to act subject to the principles of natural justice and fair procedures.

The term office-holder has now fallen into disuse, and civil servants are almost exclusively viewed as employees. Only Government Ministers, and those appointed directly by the Minister, might now be seen as office-holders. However the principles of natural justice and fair procedures developed in the courts in litigation involving dismissal of office-holders have now been applied generally, and continue to be applied, by the Employment Appeal Tribunal in any cases involving dismissal of employees.

2. The criteria defining the employment relationship are:

The terms 'employed' and 'self-employed' are not defined in law. The decision as to which category an individual belongs must be arrived at by looking at what the individual actually does, the way he or she does it and the terms and conditions under which he or she is engaged, be they written, verbal or implied or a combination of all three. It is not simply a matter of calling a job 'employment' or 'self-employment'.

However, while all of the following factors may not apply, an individual would normally be an employee if he or she:

- Is under the control of another person who directs as to how, when and where the work is to be carried out
- Supplies labour only
- Receives a fixed hourly/weekly/monthly wage
- Cannot sub-contract the work. If the work can be subcontracted and paid on by the person subcontracting the work, the employer/employee relationship may simply be transferred on.
- Does not supply materials for the job
- Does not provide equipment other than the small tools of the trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a

particular case.

- Is not exposed to personal financial risk in carrying out the work
- Does not assume any responsibility for investment and management in the business
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements
- Works set hours or a given number of hours per week or month
- Works for one person or for one business
- Receives expense payments to cover subsistence and/or travel expenses
- Is entitled to extra pay or time off for overtime.

Additional criteria:

- An individual could have considerable freedom and independence in carrying out work and still remain an employee
- An employee with specialist knowledge may not be directed as to how the work is carried out
- An individual who is paid by commission, by share, or by piecework, or in some other atypical fashion may still be regarded as an employee
- Some employees work for more than one employer at the same time.
- Some employees do not work on the employer' s premises
- There are special PRSI rules for the employment of family members
- Statements such as 'You are deemed to be an independent contractor', 'It shall be your duty to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise', 'You will not be an employee of this company', etc. are not contractual terms and have little or no contractual validity. While they may express an opinion of the contacting parties they are of minimal value in coming to a conclusion as to the work status of the person engaged.

3. Those criteria are mainly set out in or based on the following texts: (provide details)

Legislation

A definition of 'employee' is provided in some legislation, for example section 1 of the Payment of Wages Act 1991, which provides: '"employee" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment.' But nowhere in any legislation are the criteria for determining when a contract of employment exists set out. The Social Welfare (Consolidation) Acts 1993-97 also refer to the concept of an 'insurable person' for the purposes of social welfare entitlements.

jurisprudence

In the leading Irish Supreme Court case of *Henry Denny & Sons Ltd. T/A Kerry Foods v The Minister for Social Welfare [1998] 1 IR 34*, the fundamental test as to whether a person who has been engaged to perform certain work performs it 'as a person in business on their own account' was considered. This fundamental test was drawn from the English case of *Market Investigations Ltd v Minister of Social Security - [1969] QB 173* which has received extensive judicial approval in this country as well as in other common law jurisdictions. This

fundamental test in that case was amplified by a series of specific criteria, as follows:
Does the person doing the work:

- assume any responsibility for investment and management in the business or
- otherwise take any financial risk or
- provide his own equipment or helpers or
- have the opportunity to profit from sound management in the performance of his/her task

From consideration of such tests, one is better able to judge whether the person engaged is a free agent and has an economic independence of the party engaging the service. In most cases it will be clear whether an individual is employed or self-employed. However, it may not always be so obvious, which in turn can lead to misconceptions in relation to the employment status of individuals.

The *Denny* case is an important precedent in the area of whether a person is engaged under a contract of service (employee) or under a contract for services (self-employed). It is of particular assistance because of the atypical nature of the engagement at issue in the case.

The facts of the case were as follows:
The Denny company, a food processing company, took on a number of shop demonstrators, who signed written twelve-month contracts of employment and were placed on a panel of demonstrators held by the company. So when a store requested a demonstration for a product made by the Denny company, a demonstrator on the panel would be contacted by the company, and sent to the store to carry out the demonstration of the product. The demonstrator then submitted an invoice to the company which was signed by the store manager. The demonstrator was paid at a daily rate for any demonstrations carried out, and was given a mileage allowance. But demonstrators were not entitled to become a member of the company's pension scheme.

The demonstrator at issue in the case, S.M., had been employed by Denny under yearly written contracts between 1991 and 1993. Her written contract for 1993 described her as an independent contractor and purported to make her responsible for her own tax affairs. She worked an average of 28 hours a week for 48-50 weeks a year, carrying out approx. 50 demonstrations a year. When she worked in a store, she was required to comply with instructions given by the store manager, but was supplied by Denny with materials for conducting the demonstration and required their consent before sub-contracting any of the demonstrations assigned to her.

The question in the case was whether S.M. was employed under a contract of service or a contract for services, and whether she was to be considered an 'insurable person' under the Social Welfare Acts (for the purposes of determining her social insurance status).

The case was heard first by a Social Welfare deciding officer, who ruled that S.M. was employed under a contract of service (an employee). An appeals officer confirmed this decision, and the company then appealed again to the High Court, which upheld the original decision of the deciding officer. The company then appealed again to the Supreme Court, which again upheld the original decision, on grounds outlined below.

The main features of the *Denny* case were:

- The facts were fully established and articulated and relevant legal principles applied by the Social Welfare Appeals Officer. The High Court or the Supreme Court did not disturb the decision.
- The employment was atypical - the person engaged was a demonstrator / merchandiser of food products in supermarkets
- The employment was also casual in nature and would have included a pool of demonstrators to be drawn from
- Because of the casual nature of the employment - mutuality of obligation - would have been an issue i.e. whether or not the person engaged had an obligation to take each engagement when offered
- The right of substitution was an issue albeit with the approval of the employer
- The employment included fixed term contracts
- References were made to imposed conditional contracts

The Supreme Court ruled that the Appeals Officer was correct in considering 'the facts or realities of the situation on the ground' i.e. to in looking at and beyond the written contract to arrive at the totality of the relationship. Certain statements included in the contract and other notes of engagement such as:

- ' deemed to be an independent contractor',
- ' It shall be the duty of the demonstrator to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise',
- ' It is further agreed that the provisions of the Unfair Dismissals Act 1997 shall not apply etc',
- 'You will not be an employee of Kerry Foods' ,
- 'You will be responsible for your own tax affairs',

were not contractual terms but rather 'they purported to express a conclusion of law as to the consequences of the contract between the parties'. In other words, the fact that such or similar terms are included in a contract is of little value in coming to a conclusion as to the work status of the person engaged.

The Supreme Court thus held that the courts should not interfere with the findings of the appeals officer unless his findings were incapable of being supported by the facts or were based on an erroneous view of the law. The Court ruled further that in deciding whether a person was employed under a contract of service or a contract for services, each case must be considered in light of its particular facts and of the general principles which the courts have developed. In general, a person will be regarded as being employed under a contract of service and not as an independent contractor where he or she is performing services for another person and not for himself or herself.

4. Are there any indicators (features of the employment relationship), set out in legislation or developed through jurisprudence, that enable a judge or any other authorised body to determine the existence of an employment relationship in a given instance?

‘ Yes

5. Those indicators are:

- The criteria set out in the paragraphs above should help in reaching a conclusion. It is important that the job as a whole is looked at including working conditions and the reality

of the relationship, when considering the guidelines. The overriding consideration or test will always be whether the person performing the work does so 'as a person in business on their own account.' The question that must be asked is whether the person is a free agent with an economic independence of the person engaging the service?

6. *Concept of "employer" and "worker"*. These terms can be defined as follows:
Employer - means in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment.
Worker - '"employee" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment.' .....

7. The concepts of "employer" and "worker" are mainly set out in or based on the following texts:

Legislation - section 2(1) of the Organization of Working Time Act 1997, section 1 of the Payment of Wages Act 1991 each provide definitions of 'employer' and 'employee' .....
.....

8. The usual expression (s) to designate the dependent or salaried worker is (are) .....
Employee (the term 'worker' has no legal meaning). .....

9. *Status of salaried workers*. The principal instruments, including the Constitution or similar texts, governing wage employment [only if different from those mentioned above] are:

< Constitution - Article 40.6.1.iii (freedom of association)
< Legislation regulating the employment relationship:

Minimum Notice and Terms of Employment Act 1973
Holiday Entitlements under the Organization of Working Time Act 1997
Payment of Wages Act 1991
Maternity Protection Act 1994/Safety Health and Welfare (Pregnant Employees) Regulations 1994.
European Communities (Safeguarding of Employees Rights on transfer of Undertakings) Regulations 1980
Redundancy Payments Acts 1967-1991
Protection of Young Persons (Employment) Act 1996
Organization of Working Time Act 1997.
Parental Leave Act 1998.
Worker Protection (Regular Part-Time Employees) Act 1991

10. Are there certain presumptions that provide evidence or indications of the existence of an employment relationship?
‘ Yes

11. Those presumptions are:

While there is no specific definition of a contract of employment, a worker would be presumed to be working under a contract of employment where he or she:

- Works under the control of another person who directs as to how, when and where the work is to be carried out.
- Supplies labour only.
- Receives a fixed hourly/weekly/monthly wage.
- Cannot sub-contract the work. If the work can be subcontracted and paid on by the person subcontracting the work, the employer/employee relationship may simply be transferred on.
- Does not supply materials for the job.
- Does not provide equipment other than the small tools of the trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case.
- Is not exposed to personal financial risk in carrying out the work.
- Does not assume any responsibility for investment and management in the business.
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements.
- Works set hours or a given number of hours per week or month.
- Works for one person or for one business.
- Receives expense payments to cover subsistence and/or travel expenses.
- Is entitled to extra pay or time off for overtime.

12. Practical advantages and disadvantages of those presumptions:

Practical advantages: They are flexible and may be adapted to suit the individual circumstances of each working relationship. .....
Disadvantages: They lack consistency and certainty and are not applied strictly enough in practice .....
.....

13. Which are the difficulties most frequently encountered by workers to prove their employment relationships? .....

It is most difficult for workers to prove that they are in employment relationships when the relationship is not described by the employer as one of employment, and where the worker is responsible for paying his or her own taxes.
In many cases, workers do not seek to prove that they are in an employment relationship since they wish to be seen as self-employed for tax purposes .....
.....

14. Which is the machinery available to the worker and the labour inspectorate to ensure the application of labour legislation in the event of disguised employment relationships? How used and effective are they?

The law courts provide machinery of last resort to resolve issues as to whether or not a person is in employment. The more informal machinery of the Labour Relations Commission (the Rights Commissioners and Labour Court) may also be used by workers. In practice, the Revenue Commissioners (tax inspectorate) provide the most commonly used and effective machinery to ensure that disguised employment relationships are exposed. The Social Welfare Acts also provide machinery - deciding officers and appeals officers - to determine if workers are 'insurable persons' for social welfare and social insurance purposes.

15. Are salaried workers unprotected, inadequately protected or adequately protected under the law and in reality, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	adequate	inadequate
Conditions of health and safety	adequate	inadequate
Social security	adequate	inadequate
Freedom of association	inadequate	inadequate
Collective bargaining	inadequate	inadequate
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

16. The main shortcomings in the protection of workers provided for by standards or in practice within the framework of an employment relationship, and the economic, social, and political repercussions of these shortcomings, particularly as regards the points mentioned above are:

- The costs involved in taking a case through the courts of law
- Theabsence until recently of any means of insisting that an employer recognize the workers' trade union
- Thelack of knowledge among individual workers as to their rights
- The Labour Inspectorate is severely understaffed and under-resourced, despite being charged with the duty of monitoring the enforcement of legislation concerning all conditions of employment. This means that in practice they can only be reactive in responding to complaints and are effectively prevented from initiating investigations. This is a problem that has been identified and criticized by trade unions and is particularly relevant within the construction industry.

.....

17. Some legal, or administrative or other possible solutions to these problems could be:

- The introduction of mandatory recognition of trade unions by employers. The Industrial Relations (Amendment) Act 2001, which came into force on May 31, 2001, gives the Labour Court power, in circumstances in which an employer refuses to engage with a trade union representative of his/her staff, to issue a legally binding ruling on pay and

conditions. .....

- The introduction of works councils in more workplaces
- General information and education campaigns by trade unions and others to increase awareness of employment rights
- More resources to be invested in the Labour Inspectorate to enable a more effective and proactive monitoring of employment conditions .....

Quantitative trend

18. Over the past ten years the number and percentage of salaried workers in general have: increased

19. In the following sectors those figures have:

< declined; agriculture, clothing, footwear and textiles.....
.....
increased; all other sectors .....

Independent work

20. How is independent work defined in your country?

Self-employed; independent contractors; consultants; freelance; company directors; partners; those working under a contract for services. In a contract for services, the services provided may be exactly the same as those provided under a contract of employment, but with the difference that they are carried out by an individual or organisation which is not an integral part of the business. Those who provide such services may be independent contractors, freelance agents, partners etc. - but all are responsible for their own tax and social insurance contributions.

21. The criteria defining independent work are:

While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she:

- Owns his or her own business
- Is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract
- Assumes responsibility for investment and management in the enterprise
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally
- Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken
- Can provide the same services to more than one person or business at the same time
- Provides the materials for the job

- Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account
- Has a fixed place of business where materials equipment etc. can be stored
- Costs and agrees a price for the job
- Provides his or her own insurance cover e.g. public liability etc.
- Controls the hours of work in fulfilling the job obligations.

Additional factors to be considered:

- Generally an individual should satisfy the self-employed guidelines above, otherwise he or she will normally be an employee
- The fact that an individual has registered as self-employed or for VAT under the principles of self-assessment does not automatically mean that he or she is self-employed
- An office holder, such as a company director, will be taxed under the PAYE system. However, the terms and conditions may have to be examined by the Scope Section of Department of Social, Community and Family Affairs to decide the appropriate PRSI Class.
- It should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self-employed at the same time in different jobs.

.....

22. Those criteria are mainly set out in or based on the following texts:

.....

< jurisprudence - as above. The tests used to distinguish between employees and the self-employed are generally established in case law. .....

< .....

23. The usual expression (s) to designate the independent worker is (are) .....

‘ Self-employed; independent contractors; consultants; freelance; company directors; partners; those working under a contract for services

.....

24. The main forms of independent work are:

< Self-employed (eg professional, trades); independent contractors (eg trades); consultants; crafts; farmers; liberal professions; company directors; partners

.....

25. *Quantitative trend* Over the past ten years the number and percentage of independent workers have:

‘ increased

26. In the following sectors those figures have:

< increased; business, services, information technology .....

.....

27. *Qualitative trend* The main characteristics of recent trends in independent work are:

< There is no evidence of a qualitative trend (see preliminary comments, above) .....

28. Independent workers are described as:

‘ Self-employed; independent contractors; consultants; freelance; company directors; partners; those working under a contract for services

- *Status of independent workers*. The principal instruments, including the Constitution or similar texts, governing independent work [only if different from those mentioned above] are:

The principles and tests established in case law are detailed in the Code of Practice for determining Employment or Self-employment status of individuals. Dublin: Revenue Commissioners, July 2001. However there is almost no legislation regulating the conditions of work of independent contractors or the self-employed. The Companies Acts 1963-90 regulate the work of company directors to some extent.

30. The main rights of independent workers, according to those standards, are

Under the Safety Health and Welfare at Work Act 1989, section 7(1) of which provides that 'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not exposed to risks to their safety or health.' Section 8(1) imposes duties on persons in relation to those who are not their employees but who are either the employees of another person or are self-employed and who for the purposes of carrying out work use a non-domestic place of work made available to them or in which they may for the purposes of carrying out work use any article or substance provided for their use there, and it applies to places of work so made available and other non domestic places of work used in connection with them.

.....

31. Are independent workers unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	unprotected	unprotected
Conditions of health and safety	inadequate	inadequate
Social security	unprotected	unprotected

Freedom of association	unprotected	unprotected
Collective bargaining	unprotected	unprotected
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

Traditionally, those working on a self-employed basis in the liberal professions have been self-regulating through professional associations which in reality set out minimum conditions of work. However, certain interpretations of European-instigated Competition legislation suggest that many hitherto unproblematic arrangements of this kind will now come under scrutiny as constituting price-fixing.

We would suggest that a differentiation should be made between those self-employed persons who are in reality substantive employers and are delegating the delivery of services, and those who in effect are selling only their own services on a personal basis. The latter category should not be designated as 'undertakings' in competition law, and should not be subject to the same scrutiny as those who are employers.

32. Some legal, or administrative or other possible solutions to these problems could be: Extension of the concept of professional associations as for barristers, accountants, engineers etc. In reality, the only protection for the self-employed is to litigate on the basis of breach of a commercial contract through the ordinary courts.

In an Irish context, the best solution would be to apply the definitions of employee and self-employed in a more systematic way, and to define all categories of worker clearly as one or the other. In our view, the presumption should be that someone in an ambiguous working relationship or with ambiguous employment status is an employee, so that employment protection legislation would apply to them unless it were proved according to specific criteria that they were genuinely self-employed. .....
.....

Ambiguous or disguised work

33. In your country are there any self-employed persons or independent workers who, economically or for other reasons, are dependent on the person or persons for whom they provide services (their clients, for example)?

Yes - indeed it could be argued that all self-employed or independent workers could be placed within this category. This type of independent work would include some professionals eg barristers who are dependent upon solicitors for providing them with clients. There are no set criteria defining professional groups of this type. The category would also include other professionals such as architects, and other workers such as bicycle couriers, lorry drivers and

builders.

34. The criteria defining independent work of the kind mentioned above are:

Again there is no specific definition for any such category of self-employed or independent workers - they would just come under the general heading of 'self-employed.'

35. Those criteria are mainly set out in or based on the following texts (provide details):

< No texts apply in this area.

36. Which are, in case of ambiguity, the main difficulties in determining whether a worker is dependent or independent?

Lack of clarity of definition; and the lack of one uniform definition.
.....

37. *Quantitative trend* Over the past ten years the number and percentage of workers in ambiguous or disguised situation have:

Given the way in which labour statistics are kept (see above), it is impossible to determine the quantitative trend in the numbers of workers in such situations.

38. In the following sectors those figures have:

See above. No data or analysis exists on this area .....

39. *Qualitative trend* The main characteristics of recent trends in ambiguous or disguised work are:

See above .....

40. *Modalities* of ambiguous or disguised employment relationships: *new forms of employment.* Which are in your country the main *new forms of employment,* where the elements of employment relationships or some of them seem not to be present, or are difficult to perceive?

< Within the category known as 'self-employed', there have always been workers in ambiguous relationships with a client who in reality is more or less an employer. These now include many self-employed workers in the high-technology sector; also included more traditionally are taxi-drivers, builders and couriers. But in all of these cases, the relationship is described as being between two independent contractors but in reality it is effectively the relationship amounts to a contract of employment within which the worker is dependent for all or most of his or her work upon a client who is more like an employer. .....

41. *Modalities* of ambiguous or disguised employment relationships: which are in your country *the main relationships* -civil or commercial or of another nature, say “civic” or “public”- under which the employment relationship or the employment contract are *often disguised.*?

See above.

42. Which is the condition of workers that may be considered by law or in practice as independent, but who may be in need of special protection due to the fact that they are dependent -economically or in another manner- on the person to whom they offer their services? In particular:

a) how can these workers be defined or described, which are in practice their main characteristics?

< In our view, the solution to this problem of difficulty with definition is the strict application of the test to determine employment status. The definition of employee should be redrafted to incorporate strict criteria of the type identified in the Code of Practice of the Employment Status Group, and workers in ambiguous relationships in which they are really dependent upon a client or employer should be brought within the category of 'employee'. The definition of 'employee' should therefore be broadened to fit them. .....
.....

b) denomination: which are the terms most currently used, in professional circles or by the wider public, to designate such workers?

There is no specific term used to designate such workers. They would generally be known as 'self -employed' or 'independent contractors' but in truth may be employees.

c) which are the main activities currently carried out by independent workers who are in situations of dependency?

They are to

They are to be found in every sector; transport, construction, professional services, information technology and engineering; journalism and media. .....

d) which are the main causes of this kind of work?

< Workers usually take on an ambiguous employment status, or alternatively employers usually designate workers as being self-employed, for reasons connected with avoidance of social security and income tax obligations attached to the employment relationship.....

e) should these workers be classified as:

< self-employed workers, with the same status as such workers? .....
C subordinate workers, with the same status as such workers? .....
C workers in a different situation who have, or merit, their own legal treatment? .....

These workers should be classified as employees where that is the economic reality of their working relationship with the client/employer.

43. Are “independent-dependent” workers unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice

Conditions of employment and remuneration	unprotected*	unprotected*
Conditions of health and safety	inadequate*	inadequate*
Social security	unprotected*	unprotected*
Freedom of association	unprotected*	unprotected*
Collective bargaining	unprotected*	unprotected*
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

*Unless they are designated as employees, in which case standard employment protection provisions will apply to them.

44. Some legal, or administrative or other possible solutions to these problems could be:

The consistent application of established criteria to define workers in dependent relationships as employees.

“TRIANGULAR” OR “MULTILATERAL” RELATIONSHIPS

44. Traditionally, the most common “triangular” relationships are probably those that may exist between a person who places an order for a piece of work or a service, a person working on his own account who undertakes to carry out the work or provide the service, and the latter’s workers. If this type of relationship exists in your country, what is it called?

The most obvious category of such workers is that of 'agency workers' , ie. persons who register with employment agencies that make temporary workers available to a third party (the hirer). These workers are often nominally described as self-employed, but are dependent upon the employment agency for the provision of work with different employers to them. Recent legislation regulates the position of agency workers. The classic example of such workers is that of 'agency temps', who are hired out to do secretarial work for third party employers.

45. The other principal types of “triangular” OR “multilateral” relationship are:

Other categories of worker such as those involved in labour-only subcontracting ('the lump') might also be described in this way.

46. As regards workers' rights, the main legal provisions governing such "triangular relationships" are:

Recent employment protection legislation provides that agency workers may treat the person who pays their wages as their employer.

Section2(1) of the Organization of Working Time Act 1997 provides that a "contract of employment" means '(a) a contract of service or apprenticeship, and (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing.'

Under the same provision, '"employer" means in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of "contract of employment" is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer.'

Similarly, section 2(3) of the Employment Equality Act 1998 provides that 'the person who is liable for the pay of the agency worker shall be deemed to be the employer.'

However, by contrast, section 13 of the Unfair Dismissals (Amendment) Act 1993 provides that 'where, whether before, on or after the commencement of this Act, an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract and whether or not the third person pays the wages or salary of the individual in respect of the work or service), then, for the purposes of the Principal Act, as respects a dismissal occurring after such commencement - (a) the individual shall be deemed to be an employee employed by the third person under a contract of employment, (b) if the contract was made before such commencement, it shall be deemed to have been made upon such commencement, and (c) any redress under the Principal Act for unfair dismissal of the individual under the contract shall be awarded against the third person.

This means that even if the agency pays the wages of the worker, for the purposes of unfair dismissal claims the third party hirer is deemed to be the employer. The practical problem for agency workers is that many of them will not have the requisite one year's service with the third party hirer that is needed before any unfair dismissal claim may be taken.

The second problem is with the inconsistency between all the legislation. It means that the definition of ' employer' for an agency worker will differ depending on the nature of the claim

which the agency worker wishes to take in employment law. The legal status of such workers is therefore somewhat complex. In a decision made prior to the enactment of the above legislation, *The Minister for Labour v. PMPA Insurance Co. under administration (1986) 5 JISLL 215*, the agency temp was held not to be an employee of the hiring company and thus did not have any protection under dismissal legislation. The effect of this case was of course overruled by the passing of the Unfair Dismissals (Amendment) Act 1993.

48. Are workers in a "triangular" or "multilateral" relationship unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	inadequate	inadequate
Conditions of health and safety	inadequate	inadequate
Social security	inadequate	inadequate
Freedom of association	inadequate	inadequate
Collective bargaining	inadequate	inadequate
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

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49. Some legal, or administrative or other possible solutions to these problems could be:

In the particular case of agency workers, there is a need for clarification in the law. A uniform definition of employer should be provided. The employment agency itself should be seen as the employer, since the worker generally enjoys a more consistent ongoing relationship with the agency, rather than with the third party hirer. The agency as employer should then assume all responsibilities for the agency worker as its employee, and protection should be extended explicitly to agency workers where it is not referred to at present (for example, under the Minimum Notice Act 1973).

For other categories of worker such as labour only subcontracting, this simply amounts to a disguised employment relationship and again the criteria used to define employees should be strictly applied to such workers.

OTHER EMPLOYMENT SITUATIONS

50. What employment situations exist in your country other than those already mentioned (dependent work, independent work, ambiguous work, “triangular” or “multilateral” employment relationships)? How would you describe them? What is their juridical status? [If necessary, use additional sheets of paper.]

Those who work part-time. This category is defined as being those employees who work eight hours or more per week under the Worker Protection (Regular Part-time Employees) Act 1991 - no definition of 'full-time' work is provided so this may differ depending on the place of employment. These workers are regarded as employees and all the normal employment protection legislation applies to them, although for example holiday entitlements are only available on a pro-rata basis compared to full-time workers, under the Organization of Working Time Act 1997;
Those who work on short-term or fixed-term contracts of employment. Again these are also designated as employees for the duration of their contracts and all the normal employment protection legislation applies to them;
Those on 'zero-hour' contracts. This means those workers whose contracts of employment do not specify any minimum number of hours which they must work each week - some weeks they would work no hours, and as a matter of course they would only be paid for those hours they actually worked. This practice had been adopted by some employers in the retail sector but was effectively prohibited through section 18 of the Organization of Working Time Act 1997, which provides that where an employer seeks to use such a contract, he or she is obliged to provide a certain minimum amount of work to the employee each week, and if they do not, then they must pay the employee a certain minimum wage each week.

SPECIFIC CASES

51. *Truck driver for a transport enterprise*

(a) Truck drivers usually operate as employed workers, although some are designated as self-employed.
(b) Consequently, the basic characteristics of their work relationship with the enterprise(s) for which they work are:

The same as those of any employees.

(c). The principal instruments governing their work are:

All relevant employment protection legislation; Transport Regulations and Statutory Instruments, particularly those introduced under the Organization of Working Time Act 1997 as Statutory Instrument 98/20, the Organization of Working Time (Exemption of Transport Activities) Regulations 1998.

- The main jurisprudential guidelines relating to the work of truck drivers are [indicate and if possible attach copies of the most relevant court decisions]:

Attached:

- Decision of Supreme Court in *Nolan Transport v. Halligan [1999] 1 IR 128* (which has major implications for the freedom of association of transport workers, among other matters).
- Decision of the Labour Court in *Coastal Line Container Terminal Ltd. v. SIPTU [2000] 1 IR 549*, in which the Court found that 32 dockside employees were covered by Statutory Instrument 98/21, which obliges employers to make arrangements for compensatory rest periods, and not by S.I. 98/20 which exempts some transport workers from the OWTA. The Court found that all 'non-mobile' workers in the transport sector were covered by the OWTA, and are therefore covered by the provisions for a 48-hour maximum working week and by the rules on compensatory rest periods.
- Decision of the European Court of Justice *Case C-297/99 Skills Motor Coaches Ltd.* on the use of tachographs for drivers.

(e) Are truck drivers normally unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	adequate	inadequate
Conditions of health and safety	adequate	inadequate
Social security	adequate	inadequate
Freedom of association	inadequate	inadequate
Collective bargaining	inadequate	inadequate
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

(f) The main shortcomings in the protection of truck drivers are:

Conditions of employment and remuneration

The protection of truck drivers has improved significantly now that they have been brought within the scope of the OWTA - they were previously excluded.

Conditions of safety and health

These are still inadequate although improved since the OWTA protection has been extended to truck drivers.....

Social security

.....

Those truck drivers who are designated as employees are adequately covered for social security.....

Freedom of association

.....

Truck drivers are protected as any other employees (although see *Nolan Transport* case)

Collective bargaining

.....

As employees, truck drivers receive the same protection as any other employees.

Administrative, judicial or contractual
arrangements for resolving individual disputes

.....

Truck drivers again have the same protection as any other employees in this regard.....

52. *Department store salespersons, for example in the perfume department*

(a) These persons usually operate as employees (see the *Denny* case referred to above).

(b) Consequently, the basic terms of these workers' relationship with the enterprise(s) for which they work are:

.....

Those terms implicit in a contract of employment.

(c). The principal instruments governing their work are:

Employment protection legislation; the Shops Acts; and certain specific regulations under the OWTA, namely SI 98/57, Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998; and SI 98/444, Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) Declaration Order 1998. .....

(d) The main jurisprudential guidelines relating to their work are [indicate and if possible attach copies of the most relevant court decisions]:

See *Mandate v. Penneys, High Court, 4th March 1999*, an equal pay case. Here, historically different pay bargaining structures and procedures were successfully relied upon by the employer, Penneys (a clothes retail company), as justifying different pay rates between a group of 550 mainly female sales and clerical assistants and a group of 11 male storemen. The work of both groups was found to be equal in value, but the larger group had relied upon their union, Mandate, negotiating pay rates at a higher level with IBEC (the Irish Business and Employers Council), whereas the smaller male group had negotiated directly with

Penneys management.. .....

(e) Are these persons normally unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	adequate	inadequate
Conditions of health and safety	adequate	inadequate
Social security	adequate	inadequate
Freedom of association	inadequate	inadequate
Collective bargaining	inadequate	inadequate
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

(f) The main shortcomings in the protection of these workers are:

Conditions of employment and remuneration

These have improved with the enactment of the OWTA and the introduction of regulations specifically relating to shop workers under that Act. .....

Conditions of safety and health

As above. .....

Social security; Freedom of association; Collective bargaining; Administrative, judicial or contractual arrangements for resolving individual disputes

.....

Where retail salespersons are designated as employees, they receive all the protection generally afforded to employees under the above headings. .....

53. *Construction workers*

(a) Construction workers usually operate as employees, or in some cases as self-employed contractors ('the lump')

(b) Consequently, the basic terms of these workers' relationship with the enterprise(s) for which they work are:

.....

See attached leaflet issued by the Revenue Commissioners as to the construction industry.

(c). The principal instruments governing their work are:

Employment protection legislation, and the Factories Acts.

(d) The main jurisprudential guidelines relating to their work are [indicate and if possible attach copies of the most relevant court decisions]:

There are few specific cases relating to the work of those in the construction industry, although there are many personal injury cases taken by workers in this industry against their employers alleging negligence in the observation of health and safety standards..

(e) Are construction workers normally unprotected, inadequately protected or adequately protected under the law and in practice, as regards the following aspects:

	Under the law	In practice
Conditions of employment and remuneration	adequate	inadequate
Conditions of health and safety	inadequate	inadequate
Social security	adequate	inadequate
Freedom of association	inadequate	inadequate
Collective bargaining	inadequate	inadequate
Access to justice: Administrative, judicial or contractual arrangements for resolving individual disputes	adequate	inadequate

(f) The main shortcomings in the protection of construction workers are:

Conditions of employment and remuneration

.....

These are the same as for any category of employees.

Conditions of safety and health

.....

This is one area in which the protection of construction workers, in particular, is far from adequate. Every year sees many serious accidents and fatalities occurring in this industry. There have been a number of high-profile personal injury cases arising, but to date few successful prosecutions of employers in criminal law. One exception is the case of *Zoe Developments*, High Court, November 17, 1997 (no written judgment), in which a construction company was required to make a £100,000 contribution to charity, because its negligence in the observation of health and safety standards had caused the death of a construction worker (the company was found guilty of twelve breaches of the Safety, Health and Welfare at Work Act 1989).

Social security; Freedom of association; Collective bargaining; Administrative, judicial or contractual arrangements for resolving individual disputes

.....

Where construction workers are designated as employees, they receive all the protection generally afforded to employees under the above headings.

****

Do you have any general or specific comments that you would like to make on any of the points mentioned above, or on any aspects that are not covered by this questionnaire?

See Preliminary Comments provided above. .....

Appendix - enclosed with hard copy only

- Code of Practice in Determining Employment Status (PPF Employment Status Group)
- Report of Employment Status Group of PPF
- *Henry Denny & Sons Ltd. T/A Kerry Foods v Minister for Social Welfare [1998] 1 IR 34*
- Organisation of Working Time Act 1997
- *Nolan Transport v. Halligan [1999] 1 IR 128*
- *Coastal Line Container Terminal Ltd. v. SIPTU [2000] 1 IR 549*
- European Court of Justice *Case C-297/99 Skills Motor Coaches Ltd.*
- *Mandate v. Penneys, High Court, 4th March 1999*

- Leaflet on Construction Workers (Revenue Commissioners)