IRELAND’S RESPONSE

[1] Laws and Regulations

Unfair Dismissals Act 1977 – 2007
The Unfair Dismissals Act, 1977 - 2007, governs the law in relation to dismissals. The Act is one of a group of Acts included in this collective citation, to be construed as one (Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (27/2007), s.1(4)). The acts in this group are;

- Unfair Dismissals Act 1977 (10/1977)
- Unfair Dismissals (Amendment) Act 1993 (22/1993)
- Protection of Employees (Part-Time Work) Act 2001 (45/2001) (in so far as it relates to the Unfair Dismissals Acts 1977 to 1993

Terms of Employment (Information) Acts 1994 to 2014: this Act is one of a group of Acts included in this collective citation, to be construed together as one (Local Government Reform Act 2014 (1/2014), s. 1(18)). The Acts in this group are:

- Unfair Dismissals Acts 1977 to 2007
- Local Government Reform Act 2014 (1/2014), s. 1(18), the amendments to the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 and the Unfair Dismissals Act 1977 provided for in s.5 (6) and Part 6 of Schedule 2
[2] Is there an obligation for the employer to give reasons for the dismissal?

Section 6(4) of the Unfair Dismissals Act 1977 provides that in order to justify a dismissal, an employer must show that it either resulted from one or more of the following causes:

(a) the capability, competence of qualifications of the employee for the work s/he was employed to do;
(b) the employee’s conduct
(c) Redundancy
(d) The fact that continuation of employment would contravene another statutory requirement
(e) Or that there were other substantial grounds for dismissal

[3] If so, is there an obligation on the employer to specify the reasons for dismissal, so that the employee knows exactly why he lost his employment, or is it sufficient, for the employer, to give a general motive pattern like «incompetence»?

As stated, the employer must justify the dismissal by any of the reasons listed above.

However, there is no automatic right to a written statement of reasons for dismissal to a former employee, although it is good practice to provide one. However, if an employee with the necessary service requests such a statement, it must be provided for.

Section 14(4) of the Unfair Dismissals Act, 1977, as amended by s.9 of the 1993 Act states

‘Where an employee is dismissed, the employer shall, if so requested, furnish to the employee within 14 days of the request, particulars in writing of the grounds for the dismissal, but in determining for the purposes of this whether, in accordance with the provisions of this Act, the dismissal was an unfair dismissal, there may be taken into account any other grounds which, subject to the provisions of this Act and having regard to all the circumstances, are substantial grounds for justifying the dismissal’

[4] If the employer doesn’t give the real reasons for the dismissal to the employee, can he still invoke them in court?

Section 6 of the Unfair Dismissals Act provides that all dismissals are deemed ‘unfair’ unless there were substantial grounds justifying the dismissal. This means that the onus of
proving that the dismissal was fair rests with the employer. In an Employment Appeals Tribunal, the employer must fill out a form which details the grounds of defence. **Given varied reasons which may arise for an employees’ dismissal, further grounds may be added at the date of the hearing.** The Tribunal may seek clarification or further particulars of the grounds of defence, although the claimant is not entitled to seek such information.

Section 11 of the 1993 (Amendment) Act provides that either party may appeal to the Circuit Order from any determination of the Tribunal in relation to a claim for redress within 6 weeks from the date on which the determination is communicated to the parties. The Circuit Court will then conduct a complete rehearing of the case.

**[5] What is the nature of judicial review on the ground of a dismissal:**

- Is it a marginal control, i.e. that the court can not substitute its opinion for that of the employer regarding the advisability of dismissal or is it an unlimited jurisdiction, which means that the judge may substitute its assessment for that of the employer and give the decision that should have been made?

It is marginal control, the Rights Commissioner/ Employment Appeals Tribunal/ Court will decide the outcome based upon the facts before it. Judicial review in this country is primarily concerned with the decision-making process rather than with the substance of the decision.

Below are the steps set out for taking an action of unfair dismissal and appealing such decisions.

**Step1:** A former employee (claimant) can bring a claim to the Rights Commissioner who will hear the case and issue a recommendation. If no agreement can be reached by the Commissioner he will proceed to issue a recommendation which is binding on the parties under the Unfair Dismissals Acts unless an appeal to the Employment Appeals Tribunal is taken. If no appeal is taken within the prescribed time limit (6 weeks) the employer will be bound by the recommendation and if he fails to implement it a claimant may apply to the EAT to seek implementation of it.

**Step 2:** The claimant may appeal this to the Employment Appeals Tribunal within six weeks. The EAT is an independent body bound to act judicially, and was set up to provide a fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.
**Step 3:** Section 11 of the 1993 (Amendment) Act provides that either party may appeal to the Circuit Court from any determination of the Tribunal in relation to a claim for redress within six weeks from the date on which the determination is communicated to the parties. Such an appeal may be made in whole or in part. The Circuit Court will completely rehear the case on oral evidence unless the court orders otherwise. Upon application to the court, either side may apply for further and better particulars. The court may order costs.

**Step 4:** While the Act does not specifically provide for an appeal to the High Court, it has been accepted that an appeal under the Act is a ‘civil action or matter’ within the meaning of section 38 of the Courts of Justice Acts 1936 and that a full appeal does lie to the High Court. An appeal from the Circuit Court to the High Court must be lodged within 10 days of the Circuit Court decision. Such appeals are full hearings of the case (not just appeal on a point of law).

**Step 5:** The High Court decision may be appealed to the Court of Appeal except in cases where the Supreme Court has permitted an appeal to it on being satisfied that the appeal meets the threshold set out in Article 34.5.4 of the Constitution.

**[6] What are the consequences on the employer for not giving reasons or for giving inadequate reasons:**

- The nullity of the dismissal?
- An obligation to continue the contractual relationship (reinstatement)?
- Sanctions?
- Civil sanctions provided by the law?
- Financial sanctions (damages) for a wrongful dismissal?

As the Unfair Dismissals Act provides that all dismissals are deemed ‘unfair’ the onus of proving that the dismissal was fair rests with the employer. A failure to give reasons or the giving of inadequate reasons will result in the finding of unfair dismissal.

Section 7 of the Act sets out the remedies available where unfair dismissal has been held. Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers appropriate having regard to all the circumstances:

- Section 7 (a) provides for the reinstatement of the employee in his previous position with effect from the date of dismissal and with the same terms and conditions of employment as before.
• Section 7(b) provides for re-engagement of the employee in his previous position or in another reasonably suitable position on conditions (including pay) specified by the Rights Commissioner, tribunal or court; or

• Section 7(c) provides for compensation of up to a maximum of 104 weeks’ remuneration in respect of any financial loss caused to the employee by the unfair dismissal. Where an employee is found to have contributed to his own dismissal this amount may be reduced to take account of that percentage contribution.