



AN BILLE UM IOCAIOCHTAI IOMARCAIOCHTA, 1979 REDUNDANCY PAYMENTS BILL, 1979

EXPLANATORY MEMORANDUM

Summary

1. Having regard to developments since the introduction of the Redundancy Payments Scheme it is proposed to discontinue weekly payments (Section 8) and workers' redundancy contributions (Section 2).

2. Other changes proposed in the Redundancy Payments Scheme are:—

(1) the introduction of a system of employer only contributions on a pay-related basis at the rate of 0.5 per cent of employee earnings up to £5,000 per annum (Section 3),

(2) increasing the earnings ceiling used for calculating lump-sums from the present level of £2,500 per annum to £5,000 (Section 4),

(3) the simplification of rebates to employers by replacing the present complicated system (whereby the size of rebates was related to the length of notice given) by one fixed rate of rebate set at 60 per cent (Section 6),

(4) the reduction of the upper age for qualification to coincide with that for old age pension (Section 5),

(5) the reduction from 21 to 20 of the number of hours to be normally worked in a week in order to be entitled to redundancy payments (Schedule),

(6) the establishment of a worker's right to reasonable time-off to look for work or training during the two weeks' redundancy notice period (Section 7).

3. The Bill also includes a provision which would empower the Minister for Labour to appoint two additional vice-chairmen and six additional ordinary members to the Employment Appeals Tribunal and to make further appointments should the workload of the Tribunal warrant it. The Tribunal deals not only with appeals under the Redundancy Payments Acts 1967-1973 but also with appeals under the Minimum Notice and Terms of Employment Act, 1973, and the Unfair Dismissals Act, 1977 (Schedule).

4. A number of other amendments affect details of eligibility and the administration of the scheme and are explained in paragraphs 21-32 below.

Details

Discontinuance of weekly payments (Section 8)

5. Weekly payments are an income maintenance feature of the Scheme. The maximum payment is £24.04 and the average is around £15. With social welfare benefits now much higher in relation to

average earnings than when the Scheme was drawn up in 1967, and with the operation of the 85 per cent rule introduced in 1976 limiting the aggregate weekly sum an unemployed worker can get in unemployment benefit, pay-related benefit and redundancy payments to 85 per cent of his average net weekly earnings, it is considered appropriate to remove this income maintenance feature of the Scheme, which is primarily designed as an instrument of manpower policy.

Abolition of workers' contributions (Section 2)

6. Workers' redundancy contributions have always been equated with redundancy weekly payments. It is considered appropriate to discontinue both these features of the scheme together, subject to current recipients of weekly payments being allowed to exhaust their entitlements.

Contributions to be pay-related at a rate of 0.5 of pay (Section 3)

7. The redundancy contribution is collected with the social insurance contribution. The social insurance "stamp" is being replaced by a pay-related system of contributions from 6 April, 1979 to be collected along with PAYE. This is provided for in the Social Welfare (Amendment) Act, 1978. It is proposed that the redundancy contributions should be similarly pay-related and subject to the same earnings ceiling (£5,000) and definition of earnings as for social insurance contributions. It is proposed that the redundancy contribution, to be borne by the employer only, be fixed at a rate of 0.5 per cent of such earnings.

Increase in earnings ceiling for calculating lump sums (Section 4)

8. The pay by reference to which redundancy payments are calculated is broadly gross pay including overtime, commission and payments in kind. In 1974 this ceiling was set at £2,500, the same as for Pay-Related Benefit. Under the present ceiling the highest lump sum is £2,043. Under a ceiling of £5,000 the highest lump sum would be £3,702, assuming the qualifying upper age limit is reduced to the present old age pension age of 66 as proposed (see paragraphs 15 and 16 below).

Simplified rebate system (Section 6)

9. At present, an employer is entitled to a rebate of 55 per cent if he gives the employee a minimum of two weeks' notice. (The Minister for Labour may reduce the rebate to 45 per cent for failure to give two weeks' notice). The employer can however receive an extra 2½ per cent rebate for each week of extra notice which he gives above two weeks up to a maximum of 8 weeks thus enabling him to receive 70 per cent. Furthermore in certain long-service cases part of the lump sum is rebated at 100 per cent, which can result in some rebates being higher than 70 per cent.

10. The graduated rebate arrangement was introduced as an incentive to employers to give more than the minimum two weeks' statutory notice so that workers would have more time to look for other jobs, as well as providing the Minister with manpower information for the purpose of placement of redundant workers in new employment. These objectives are now catered for by subsequent legislation and the development of the National Manpower Service. The Minimum Notice and Terms of Employment Act, 1973 gives employees a right to notice of dismissal of up to 8 weeks depending on length of service, and the Protection of Employment Act, 1977 requires employers to notify the Minister of collective dismissals and to have consultations with employees' representatives.

11. For the efficient operation of the Redundancy Payments Scheme there is no longer any need for or advantage in providing for the voluntary additional notice which entitles employers to additional rebate. The present rebate/notice provisions of the Scheme are complicated and make understanding by employers and employees and administration of the Scheme difficult. The new provisions would be easier to understand and administer.

12. The Bill accordingly provides that the present provisions (i.e. a 55 per cent basic rebate plus incentive rebate of up to a further 15 per cent and full rebate for that part of the lump sum exceeding 20 weeks' pay) should be replaced by a provision for a standard rate of 60 per cent.

13. It is proposed that for failure to comply with the minimum two weeks' notice requirement the rate of rebate may be reduced to 40 per cent.

14. It is also proposed that the Minister should have power to vary the rate of rebate by regulation subject to the sanction of the Minister for Finance and possible annulment by either the Dáil or Seanad.

Reduction in upper age for qualification (Section 5)

15. The upper age limit for qualifying for statutory redundancy payments is 70 years which was the Old Age Pension qualification age at the time the redundancy age limit was fixed.

16. It is considered that there should be an upper age limit to entitlement to redundancy payments, and that the qualifying age for receipt of Old Age Pension, now 66, would be appropriate. It is felt however that the immediate introduction of a drop in the qualification age to 66 could lead to many workers in the age bracket 66-70 and their employers losing entitlement they might reasonably have expected. In order that they should have some time to adjust to the new requirements it is proposed that the drop should not be effective until a further year has elapsed. It is proposed, therefore, that from 6th April, 1980 only persons whose employment is terminated on grounds of redundancy before attaining Old Age Pension age shall qualify for redundancy payments.

Reduction in hours to be worked per week for entitlement (Schedule)

17. The Redundancy Payments Acts do not apply to a person who is "normally expected to work for the same employer for less than 21 hours in a week". The figure of 21 hours was arrived at when this was half the then normal working week of 42 hours. A reduction in the limit to 20 in line with the general reduction in the normal working week is therefore proposed.

Right to paid time-off (Section 7)

18. It is proposed during the two-week period of notice for redundancy purposes to give employees the right to paid time-off to seek new employment or retraining. The employer may require the employee to furnish him with evidence of arrangements relating to efforts to obtain new employment or training.

Increase in the number of members of the Employment Appeals Tribunal (Schedule)

19. The Employment Appeals Tribunal, established by the Redundancy Payments Act, 1967, and given its present title in the Unfair Dismissals Act, 1977, decides disputes about entitlement. It consists of (a) a chairman (having had at least seven years' experience as a practising barrister or solicitor) (b) not more than three vice-chairmen, and (c) not more than 24 ordinary members representative of workers and of employers (12 from each side) all appointed by the Minister for Labour. The Tribunal has its full authorised complement, all members operating on a part-time basis.

20. The scope of the Tribunal's functions was extended by the Minimum Notice and Terms of Employment Act, 1973, and was further extended by the Unfair Dismissals Act, 1977. Over the years the workload of the Tribunal has increased steadily. Notwithstanding its increasing workload the only increase made in the membership of the Tribunal was in the number of ordinary members from 12 to 24 authorised in the 1971 Redundancy Payments Act in order to

cope with the anticipated increase in the number of cases coming before the Tribunal because of the amendments then effected. It is the experience that an appeal under the Unfair Dismissals Act takes considerably longer to hear than a case under the other Acts. The Bill proposes to empower the Minister to appoint two additional vice-chairmen and six additional ordinary members and to make further appointments should the workload of the Tribunal warrant it.

Other Provisions

21. The Unfair Dismissals Act, 1977 provides for the possibility of reinstatement or re-engagement of the employee. It is proposed to provide against loss of entitlement to redundancy payments in such cases. (Schedule).

22. In the Redundancy Payments Act, 1967, the concept of "obligatory period" was devised as some protection to employers in cases where redundant employees wished to leave before the period of the employers' notice expired. It means the period of notice to which an employee is entitled either under the contract of employment or statute. Where the employer gives longer notice "the obligatory period" of that longer notice is the period which expires at the time when the employer's notice expires. An employee wishing to leave before expiration of employer's notice and remain entitled to redundancy payments can do so only by giving, within the obligatory period, written notice of intention to leave, and with the employer's consent. When an employer objects the Employment Appeals Tribunal can decide the issue. This provision can operate unsatisfactorily; for example the employee might obtain an offer of other employment conditional on his taking up the job without delay, but if the employee leaves before the obligatory period he loses redundancy entitlement and if the employer nevertheless pays, he loses entitlement to rebate. It is therefore proposed that the parties may by agreement bring forward the termination date of employer's notice so that the employee's notice may be within the obligatory period. (Section 9).

23. The time limit for claiming a redundancy payment is 52 weeks which the Employment Appeals Tribunal may extend to 104 weeks. It could happen that an employee could become redundant, and entitled to redundancy payment (having been technically dismissed by one employer and employed by another) without his learning of the fact before the 104 week limit had expired. This would be because of the failure of an employer to give notice or a redundancy certificate. It is therefore proposed to empower the Tribunal at its discretion to extend the time for claiming in such circumstances. (Section 12).

24. The Act provides that where an employee's employment ceases by reason of his employer's being unable to provide the work for which the employee was employed to do and it is reasonable in the circumstances for that employer to believe that the cessation of employment will not be permanent and where the employer gives notice to that effect to the employee prior to the cessation, that cessation of employment shall be regarded for the purpose of the Redundancy Payments Scheme as lay-off. The reasonableness or otherwise of the employer's belief that cesser will not be permanent is subject to scrutiny of the Tribunal, which will have regard to all the circumstances in deciding whether employer's belief was reasonable or whether the purported lay-off in fact amounted to a constructive dismissal. In the case of short-time, the Tribunal is precluded from investigating the matter because of the absence of any provision as to the reasonableness or otherwise of employer's belief that short-time will not be permanent. It is proposed therefore to include a provision which will subject short-time to the same tests as lay-off. (Section 10).

25. Present legislation provides that a worker can claim redundancy if he is put on short-time i.e., less than half his normal weekly hours or less than half his weekly normal remuneration, and where such short-time continues for specified periods. Where the short-time

working leaves the worker with half his normal hours or normal pay or more he may still be able to claim redundancy on the grounds that his former job has ceased and the new job does not constitute an offer of suitable employment which would disentitle him to redundancy payments. However, it appears that in the latter case (where the reduction in hours or pay is not more than one half) the worker would have to refuse the new working conditions immediately or carry them out for not more than four weeks. The Employment Appeals Tribunal which decides these issues has intimated that on the basis of Counsel's opinion it feels constrained to decide in such circumstances that the worker who has worked the new situation for four weeks or more has accepted revised terms and conditions and is not therefore entitled to redundancy. It is felt that the legislation should not tend to discourage the acceptance of reasonable short-time working whenever appropriate, and should not encourage workers to claim redundancy by virtue of part-time working which is not a particularly severe reduction. Therefore the Bill provides that in such circumstances dismissal for redundancy may be deemed to have occurred notwithstanding that the person has accepted reduced hours and/or pay for not more than 52 weeks i.e., he shall not for that reason alone lose redundancy entitlement. (Section 11).

26. Under the 1967 Redundancy Payments Act, the rules governing continuous employment lay down that employment shall be taken to be continuous unless terminated by dismissal or by the employee's voluntarily leaving the employment. It is nevertheless also provided that continuity of employment is preserved in certain circumstances and subject to defined time limits where employment is resumed with the same employer whether or not notice of termination of employment had been given. Childbirth or maternity is not actually specified in this respect but, where an absence of up to 26 weeks for any cause is authorised by the employer, continuity of employment is preserved if the employee had been dismissed within such 26 week period but was later re-employed. The Bill provides that an absence for childbirth for a period not exceeding 13 weeks should not break continuity of a woman's employment, even if the absence was not authorised (i.e. had not the prior agreement of the employer) provided of course there is a resumption of work. (Schedule).

27. Section 39 of the 1967 Act provides that notices of appeal to the Employment Appeals Tribunal must be sent to the Minister for Labour. Appeals under the Unfair Dismissals Act, 1977 and the Minimum Notice and Terms of Employment Act, 1973, go direct to the Tribunal. As there is no necessity for appeals under the Redundancy Payments Acts to be channeled through the Minister, the Bill includes a provision that such appeals go direct to the Tribunal. (Schedule).

28. Under the coming pay-related system of contributions the rate of redundancy contribution will not have to be changed from time to time simply because of the declining value of money since it is set at a percentage of reckonable earnings. While it may be necessary to raise the earnings ceiling, it is being proposed that this will change automatically whenever it is changed for the social insurance contributions. Nevertheless, it may be necessary to change the rate by reference to the varying requirements of the Redundancy Fund, and as the redundancy contribution will be collected under the PAYE system along with the social insurance contribution, any change can only be made with effect from the beginning of a tax year and must be determined in good time. The yield required will depend primarily on the incidence of redundancies and also on the age and service pattern of the redundant persons; the reserve in the Fund is also relevant. The Minister should be in a position to act quickly to keep the income and expenditure of the Fund in a proper relationship, without, if possible, having to borrow from the Exchequer. Accordingly the Bill provides for the variation of the rate of contribution by Regulation subject to the sanction of the Minister for Finance with a proviso that every such regulation shall be laid before each House and if a Resolution annulling the Regulation is passed the Regulation shall be annulled accordingly. (Section 3).

29. The method of calculating the amount of lump sum is set out in Schedule 3 of the Redundancy Payments Act, 1967 as amended; it also sets out the rules governing normal weekly remuneration by reference to which the lump sum is calculated. Briefly this is a $\frac{1}{2}$ week's pay for each year of continuous employment between the ages of 16 and 41, and a week's pay for each year over the age of 41, plus one week's pay, pay in excess of £48.08 p.w. being disregarded. It is proposed that the Minister for Labour should have power to vary the basis of calculation of lump sums by Regulation, subject to the sanction of the Minister for Finance and possible annulment by either House of the Oireachtas (Section 4). Similarly the Bill enables revision of the ceiling to gross normal remuneration by Regulation so that with the minimum of procedural difficulty this ceiling may be adjusted as may be appropriate. (Section 4).

30. If an employer refuses or fails to pay a worker his statutory lump sum entitlement the Minister is required to pay the lump sum out of the Fund whereupon all rights and remedies of the employee with respect to the lump sum are transferred to and become vested in the Minister. The Minister in cases of insolvency is then entitled to claim in the bankruptcy, arrangement, administration of the insolvent estate or winding up in respect of the amount paid less the amount of rebate which would have been payable. A provision that in winding up and bankruptcy circumstances the Minister's claim should rank as a priority debt, apart from helping to preserve the solvency of the Fund, should reduce the incidence of direct payments from the Fund in that the lump sum entitlements would in fact more often be paid along with wages due, and it would also thereby cut out or reduce the delay in workers getting their payments. The Bill proposes accordingly. (Section 13).

31. The penalties provided for in the 1967 Act have not been updated and the Bill raises these penalties. (Section 17, and Schedule).

32. In addition the Bill contains the standard provisions covering citations, construction and commencement (Section 20) and for removal by Regulation of any difficulties that may arise in bringing the revised legislation into operation. (Section 15).

*An Roinn Saothair,
Eanáir, 1979*

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