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AN BILLE UM CHOSAINN CEART FOSTAÍOCHTA, 1997
EMPLOYMENT RIGHTS PROTECTION BILL, 1997

Mar a tionscnaíodh
As initiated

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Acts Referred to

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| Adoptive Leave Act, 1995 | 1995, No. 2 |
| Bankruptcy Act, 1988 | 1988, No. 27 |
| Companies Act, 1963 | 1963, No. 33 |
| Courts Act, 1981 | 1981, No. 11 |
| Industrial Relations Act, 1990 | 1990, No. 19 |
| Maternity Protection Act, 1994 | 1994, No. 34 |
| Protection of Employees (Employer's Insolvency) Act, 1984 | 1984, No. 21 |
| Protection of Employment Act, 1977 | 1977, No. 7 |
| Redundancy Payments Act, 1967 | 1967, No. 21 |
| Unfair Dismissals Act, 1977 | 1977, No. 10 |
| Unfair Dismissals (Amendment) Act, 1993 | 1993, No. 22 |



AN BILLE UM CHOSAINT CEART FOSTAÍOCHTA, 1997
EMPLOYMENT RIGHTS PROTECTION BILL, 1997

BILL

entitled

5 AN ACT TO AMEND THE PROTECTION OF EMPLOYMENT
ACT, 1977, AND THE EUROPEAN COMMUNITIES
(SAFEGUARDING OF EMPLOYEES' RIGHTS ON
TRANSFER OF UNDERTAKINGS) REGULATIONS, 1980,
10 75/129/EEC OF 17 FEBRUARY 1975, COUNCIL DIREC-
TIVE 92/56/EEC OF 24 JUNE 1992, AND COUNCIL DIREC-
TIVE 77/187/EEC OF 14 FEBRUARY 1977, AND TO PRO-
VIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15 PART I

Collective Redundancies and Transfer of Undertakings —
Remedies

1.—(1) Any dispute between an employee and an employer, relat-
ing to compliance by the employer with any provision of—

- 20 (a) Part II, sections 14 and 15, or regulations under section 3 of
the Principal Act,
(b) the Principal Regulations, or
(c) the Directive of 1975, the Directive of 1977, or the Directive
of 1992,

Reference of
dispute regarding
collective
redundancies or
transfer of
undertakings to
rights
commissioner.

25 may be referred by either party to the dispute to a rights com-
missioner.

(2) A rights commissioner shall hear the parties to a dispute under
this Part and any evidence relevant to the dispute tendered by them.

30 (3) Referral of a dispute under this Part shall be initiated by giving
notice in writing, containing such particulars (if any) as may be pre-
scribed, to a rights commissioner within the period of 6 months from
the date on which the event complained of occurred, or, if the rights
commissioner is satisfied that exceptional circumstances prevented
35 the giving of the notice within the period aforesaid, then, within such
period not exceeding 12 months from the date aforesaid as the rights
commissioner considers reasonable, and a copy of the notice shall be
given by the rights commissioner to the other party to the dispute as
soon as may be after the receipt of the notice by the rights com-
missioner.

(4) Proceedings under this Part before a rights commissioner shall be conducted otherwise than in public.

(5) A rights commissioner shall furnish the Tribunal with a copy of a decision given under this Part.

Appeal to
Employment
Appeals Tribunal.

2.—(1) A party to a reference under *section 1* may appeal to the Tribunal from a decision of a rights commissioner in relation to a dispute referred under this Act and the Tribunal shall hear the parties and any evidence relevant to the appeal tendered by them and shall make a determination in relation to the appeal. 5

(2) An appeal under this section shall be initiated by a party by giving, within 4 weeks of the date of which the decision to which it relates was given to the parties concerned, a notice in writing to the Tribunal (containing such particulars (if any) as may be prescribed) and the Tribunal shall give a copy of the notice to the other party concerned as soon as may be after the receipt by it of the notice. 10 15

(3) A witness before the Tribunal on an appeal under this section shall be entitled to the same immunities and privileges as if the witness were a witness before the High Court.

(4) (a) The Tribunal shall, on the hearing of an appeal under this section, have power to take evidence on oath and for that purpose may cause to be administered oaths to persons attending as witnesses at such hearing. 20

(b) Any person who, upon examination on oath authorised under this subsection, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, shall be guilty of an offence and, upon being convicted thereof, shall be liable to the penalties for wilful and corrupt perjury. 25

(c) The Tribunal may, by giving notice in that behalf in writing, require any person to attend at such time and place as is specified in the notice, to give evidence in relation to any matter referred to the Tribunal under this section or to produce any documents in that person's possession, custody or control which relate to any such matter. 30

(d) A person to whom a notice under *paragraph (c)* has been given and who fails, without just cause, to attend in accordance with the notice or who, having so attended, refuses to give evidence or fails, without just cause, to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £1,500. 35 40

(5) Proceedings for an offence under *paragraph (b)* or *(d)* of *subsection (4)* may be brought and prosecuted by the Minister.

Reference or appeal
to High Court.

3.—(1) The Tribunal may refer a question of law arising in proceedings before it under this Part to the High Court for determination by it. 45

(2) A party to proceedings before the Tribunal under this Part may appeal to the High Court from a determination of the Tribunal on a point of law.

4.—(1) On the hearing of a dispute under this Part, a rights commissioner or the Tribunal shall— Redress.

(a) in the case of a rights commissioner, make a decision in relation to the dispute, or

(b) in the case of a Tribunal, make a determination in relation to the dispute,

and may give to the parties concerned such directions as the rights commissioner or the Tribunal, as the case may be, considers necessary or expedient for the resolution of the dispute.

(2) A decision or determination under *subsection (1)* shall, if the rights commissioner or Tribunal, as the case may be, considers it appropriate, include re-engagement, re-instatement, or an award of compensation in favour of the employee to be paid by the relevant employer, or the taking of other steps specified in the decision or determination.

(3) Compensation under this section shall be of such amount as the rights commissioner or the Tribunal deems just and equitable having regard to all the circumstances of the case but shall not exceed 104 weeks remuneration in respect of the employee's employment calculated in accordance with regulations made under this Act.

(4) In this section "remuneration" includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

(5) The decision of a rights commissioner or a determination of the Tribunal shall be in writing and shall be communicated to the parties by the rights commissioner or Tribunal, as the case may be.

5.—(1) Service of a notice or other document on any person for the purpose of or in relation to any proceedings under this Part may be effected by delivering it to the person to whom it relates or by sending a copy of the document by registered prepaid post in an envelope addressed to the person to be served at that person's last known place of business in the State. Service of documents.

(2) In the case of a company to which the Companies Act, 1963, applies such service may be effected by delivering the document to or by sending a copy of the document by registered prepaid post in an envelope addressed to, the company at its registered office.

(3) In the case of a body corporate to which *subsection (2)* does not apply or any unincorporated body of persons, such service may be effected by sending a copy of the document by registered prepaid post in an envelope addressed to the body at any place in the State where that body conducts its business or in such other manner as an originating summons may be served on such a body under the Rules of the Superior Courts.

6.—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable under this Part by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act. Provision in relation to winding up and bankruptcy.

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable under this Part by bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under that Act. 5

Enforcement of
decision of a rights
commissioner and
determination of a
Tribunal.

7.—(1) (a) A decision of a rights commissioner and a determination of the Tribunal in proceedings under this Part may provide that the decision or determination shall be carried out before a specified date. 10

(b) Where a decision of a rights commissioner or a determination of the Tribunal does not so provide, it shall be deemed, for the purposes of this section, to provide that it shall be carried out within 4 weeks from the date on which it is communicated to the parties. 15

(2) (a) If a party fails to carry out the terms of a decision of a rights commissioner or determination of the Tribunal in relation to a dispute referred under this Part within the period as provided in accordance with *subsection (1)*, the Circuit Court shall, on application to it in that behalf by— 20

(i) the other party concerned, or

(ii) the Minister, if of the opinion that it is appropriate to make the application having regard to all the circumstances, 25

without hearing the party in default or any evidence (other than in relation to the failure), make an order directing the party in default to carry out the decision or determination in accordance with its terms. 30

(b) In *paragraph (a)*, reference to a decision of a rights commissioner or a determination of the Tribunal is a reference to such a decision or a determination, as the case may be, in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned and the reference to the date on which the decision or a determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment. 35 40

(3) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, in case the order relates to the payment of compensation, direct the relevant employer to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning 4 weeks after the date on which the decision of a rights commissioner or the determination of the Tribunal, as the case may be, is communicated to the parties and ending on the date of the order. 45 50

(4) Proceedings under this section shall be heard in the county in which the relevant employer ordinarily resides or carries on any profession, business or occupation.

5 **8.**—In section 6 of the Protection of Employees (Employer’s Insolvency) Act, 1984—

Extension of Protection of Employees (Employer’s Insolvency) Act, 1984

(a) the reference in subparagraph (v) of subsection (2) (a) to a determination or order shall be construed as including references to a decision, determination or order under this Part, and

10 (b) the references in subparagraph (i) of subsection (4) (c) to a determination shall be construed as including references to a decision or determination under this Part and the reference in clause (II) of the said subparagraph, to section 10 (4) of the Unfair Dismissals Act, 1977 shall be
15 construed as including a reference to section 2 or 3 as may be appropriate.

20 **9.**—Proceedings under this Part may be instituted, and remedies under this Part may be awarded, whether or not a criminal prosecution under the Principal Act or the Principal Regulations could be or has been initiated in relation to the matters at issue in the proceedings.

Remedies available independently of prosecution.

PART II

General Provisions

10.—(1) The following provisions are hereby repealed—

Repeals.

- 25 (a) section 56 of the Industrial Relations Act, 1990;
- (b) section 12 of the Unfair Dismissals (Amendment) Act, 1993;
- (c) section 33 (8) of the Maternity Protection Act, 1994; and
- (d) section 35(6) of the Adoptive Leave Act, 1995.

30 **11.**—(1) The Minister may make regulations for the purposes of this Act.

Regulations.

35 (2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

40 (3) In making regulations under this Act the Minister shall have due regard to any regulations made under section 17 of the Unfair Dismissals Act, 1977, for any similar or related purpose.

12.—(1) Where an offence under any provision of this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed,

Offences.

was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and liable to be proceeded against and punished as if guilty of the offence committed by the body corporate. 5

(2) In relation to a body corporate whose affairs are managed by its members, *subsection (1)* shall have effect as if “director” included a member of the body corporate.

Increase in penalties.

13.—(1) In section 11, 13, 17(3) and 18(3) of the Principal Act, “£1,500 or imprisonment for not less than 6 months or both” is hereby substituted for “£500”. 10

(2) In regulation 9(1)(a) of the Principal Regulations, “£1,500 or imprisonment for not less than 6 months or both” is hereby substituted for “£500”.

(3) In regulation 9(1)(b) of the Principal Regulations “£1,500 or imprisonment for not less than 6 months or both” is hereby substituted for “£300”. 15

Interpretation.

14.—(1) In this Act—

“the Directive of 1975” means Council Directive 75/129/EEC of 17 February 1975; 20

“the Directive of 1977” means Council Directive 77/187/EEC of 14 February 1977;

“the Directive of 1992” means Council Directive 92/56/EEC of 24 June 1992;

“employee”, “employer” and cognate words shall have the meaning assigned by the Maternity Protection Act, 1994; 25

“the Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister under this Act; 30

“the Principal Act” means the Protection of Employment Act, 1977;

“the Principal Regulations” means the European Communities (Safeguarding of Employees’ Rights on Transfer of Undertakings) Regulations, 1980 (S.I. No. 306 of 1980);

“relevant employer” shall have the meaning assigned by section 30(3) of the Maternity Protection Act, 1994; 35

“the Tribunal” means the Tribunal established by section 39 of the Redundancy Payments Act, 1967, and known by virtue of section 18 of the Unfair Dismissals Act, 1977, as the Employment Appeals Tribunal. 40

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is indicated;

5 (b) a reference to a subsection is a reference to the subsection of the provision in which the reference occurs, unless it is indicated that reference to some other provision is indicated;

10 (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

(3) Subject to *subsections (1) and (2)*, expressions used in this Act shall have the same meaning as in the Directive of 1975, the Directive of 1977 or the Directive of 1992 as the case may be.

15 **15.**—This Act may be cited as the Employment Rights Protection Short title.
Act, 1997.



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AN BILLE UM CHOSAINT CEART FOSTAÍOCHTA, 1997
EMPLOYMENT RIGHTS PROTECTION BILL, 1997

EXPLANATORY MEMORANDUM

Background

The purpose of the Bill is to redress a serious defect in the Protection of Employment Act, 1977, and the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980, namely that the existing law fails to provide adequate remedies for non-compliance.

At present there is no right of an employee to compensation or to any other remedy for breach of the collective redundancy and transfer of undertakings laws. In view of the judgments of the Court of Justice of the European Communities in Case C-382/92 *Commission vs U.K.*, 8 June 1994, (transfer of undertakings) and Case C-383/92 *Commission vs U.K.*, 8 June 1994, (collective redundancies) this defect is likely to be held to be contrary to EC law. This Bill remedies the deficiency.

The existing enforcement mechanism is that of criminal prosecution which is unusual in the industrial relations context and is rarely used. In any event a prosecution in itself confers no benefit on a wronged employee. The Bill proposes to provide proper compensatory and remedying mechanisms for contravention of the collective redundancy legislation and the regulations on transfer of undertakings.

Provisions of Bill

The main provisions of the Bill are as follows:

- A dispute regarding compliance with the collective redundancies legislation, the transfer of undertakings regulations, or the relevant EU directives can be referred to a rights commissioner (*section 1*);
- Either side can appeal the findings of the rights commissioner to the Employment Appeals Tribunal (*section 2*);
- An appeal or reference on a point of law lies to the High Court (*section 3*);
- A full range of compensatory remedies will be available including re-instatement, re-engagement or up to 2 years pay maximum (*section 4*);
- The Bill includes standard provisions on the mode of service of documents (*section 5*) and the priority of compensation in cases of winding-up and bankruptcy (*section 6*). It provides for enforcement of awards by the Circuit Court (*section 7*) including power to award interest. Standard provisions on employers' insolvency are included (*section 8*).
- Because breach of the 1977 Act or the 1980 Regulations

amounts in some cases to an offence, *section 9* provides that a case under this Act may be taken whether or not the criminal offence can be or has been prosecuted.

- *Section 10* repeals certain provisions regarding offences relating to failing to comply with requirements to attend or produce documents or give evidence to the Employment Appeals Tribunal or Labour Court. The provisions repealed provided that evidence of non-compliance could be given by certificate rather than oral evidence. Analogous provisions were declared unconstitutional by the Supreme Court in the two recent cases of *In re Employment Equality Bill, 1996* and *In re Equal Status Bill, 1997*. Consequently the provisions identified in the section are also unconstitutional and their repeal is required.
- Provision is made for regulations (*section 11*) and offences (*section 12*), and for a general increase in penalties under the 1977 Act and 1980 Regulations from £300 or £500 to £1,500 and up to 6 months imprisonment (*section 13*). *Section 14* contains definitions and *section 15* provides the short title.

An Teachta Tomás Ó Bracháin,
Nollaig, 1997.