



**AN BILLE UM CHOSAINN FOSTAITHE (OBAIR
PHÁIRTAIMSEARTHA), 2000**
**PROTECTION OF EMPLOYEES (PART-TIME WORK) BILL,
2000**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The main purpose of the Bill is to implement the provisions of Directive 97/81/EC of the Council of the European Union concerning the Framework Agreement on Part-Time Work concluded by the general cross-industry organisations at European level — UNICE, CEEP and ETUC.

The Bill provides for the removal of discrimination against part-time workers where such exists. It aims to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers. The Bill guarantees that part-time workers may not be treated less favourably than full-time workers.

The key features of the Bill are as follows:

PART 1

Preliminary and General

Section 1 is a standard provision dealing with the short title, collective citation and construction of the Bill.

Section 2 provides that the Bill will come into operation on a day or days to be prescribed.

Section 3 sets down the main definitions associated with the Bill.

Section 4 empowers the Minister for Enterprise, Trade and Employment to make regulations and orders prescribing any matter or thing which is referred to in the Bill as prescribed or to be prescribed or for the purpose of enabling any provision of the Bill to have full effect.

Section 5 repeals the Worker Protection (Regular Part-Time Employees) Act, 1991.

Section 6 is a standard provision stating that the expenses incurred by the Minister in connection with the administration of the Bill shall be paid out of moneys provided by the Oireachtas.

PART 2

Part-Time Work and the Rights of Part-Time Employees

Section 7 deals with the definitions associated with Part 2 of the Bill.

Section 8 provides that each relevant enactment, as defined in *section 3*, shall apply to a part-time employee in the same way as it applies, other than by virtue of the Bill, to an employee to whom that enactment relates.

Section 9 provides that, generally, a part-time employee shall not be treated less favourably than a comparable full-time employee in respect of his or her conditions of employment. *Section 9(2)* provides that a part-time employee may, in respect of a particular condition of employment, be treated less favourably than a comparable full-time employee if that treatment is based on objective grounds. *Section 9(4)* provides that a part-time employee who normally works less than 8 hours per week may be treated less favourably than a comparable full-time employee in relation to pensions.

Section 10 provides that a benefit accorded to a part-time employee under *section 9(1)* of the Bill shall be on the basis of the principle of *pro-rata temporis*, i.e. shall be related to the proportion which the normal hours of work of that employee bears to the normal hours of work of the full-time comparator concerned.

Section 11 provides that a part-time employee who works on a casual basis, as defined in the section, may be treated less favourably than a comparable full-time employee if objective grounds exist to justify such less favourable treatment. *Section 11(6)* provides that the Minister shall, from time to time, review the operation of this section and may, following such a review, prescribe a class or classes of such employee to be a class or classes of employee to whom this section shall not apply.

Section 12 provides that a ground for treating an employee less favourably shall not be regarded as an objective ground for that purpose unless it is based on considerations other than the part-time status of the employee. The less favourable treatment involved for the employee must be for the purpose of achieving a legitimate objective of the employer, and such treatment must be appropriate and necessary for that purpose.

Section 13 provides that the Labour Relations Commission may, and at the request of the Minister shall, in order to identify obstacles to a person being able to perform part-time work, study every industry and sector of employment and make recommendations as to how any obstacles identified in such study could be eliminated. The Commission shall report to the Minister in relation to any study and shall publish such study and recommendations. *Section 13(4)* provides that, in drawing up recommendations, the Commission shall invite oral or written submissions from appropriate organisations representative of employers and employees and shall take account of such submissions in preparing its recommendations.

Section 14 provides that a provision in any employment agreement shall be void in so far as it is inconsistent with any provision of this Bill.

Section 15 provides that an employer shall not penalise an employee for having lawfully opposed an act which is unlawful under

this Bill. *Section 15(2)* states that penalisation for this purpose includes dismissal, unfavourable change in conditions of employment or any unfair treatment including selection for redundancy. An employee may not seek relief against such penalisation both under this Bill and under the Unfair Dismissals Acts.

Section 16 provides that a complaint by an employee, or by a trade union of which the employee is a member, that the employer has contravened *section 9* or *section 15* of the Bill in relation to that employee may be presented to a rights commissioner. The rights commissioner shall issue a written decision in the matter and communicate that decision to the parties. The decision of the rights commissioner may require the employer to pay compensation, subject to a limit of two years of the employee's remuneration. A complaint to a rights commissioner must be made within 6 months of the date of contravention of the Bill. This period may be extended by a further 12 months if the commissioner is satisfied that failure to refer the case within 6 months was due to reasonable cause. The hearing before the rights commissioner shall be conducted in private.

Section 17 provides that a decision of a rights commissioner may be appealed to the Labour Court within 6 weeks of the date of the decision. The Labour Court shall issue a determination in writing affirming, varying or setting aside the decision of the rights commissioner. The Labour Court may request the Minister to refer a question of law arising in proceedings before it under this section to the High Court for final and conclusive determination. Where a decision of the rights commissioner has not been carried out by the employer, and an appeal against the decision has not been brought within the time allowed for doing so, the employee may, within 6 weeks after the expiry of that time, refer the complaint to the Labour Court and the Labour Court shall, without hearing any evidence, make a determination to the like effect as the decision of the rights commissioner.

Section 18 provides that, where an employer fails to implement a determination of the Labour Court within 6 weeks from the date it is communicated to the parties and the determination has not been appealed within the appropriate time limit, the Circuit Court shall, on application to it by the employee concerned, a trade union of which the employee is a member, or the Minister, and without hearing any evidence, make an order directing the employer to implement the determination.

Section 19, relating to prosecution, is a technical section relating to the evidence of a person's failure to attend before, to give evidence or to produce documents to the Labour Court.

PART 3

Miscellaneous

Section 20 confirms that Irish employee protection legislation conforms to the requirements of Directive 96/71/EC of the European Parliament and of the Council of 16 December, 1996, concerning the posting of workers in the framework of the provision of services. In this regard, the section provides that a range of employee protection legislation applies to workers posted to work in this country, both within the meaning of the Directive and otherwise, in exactly the same way as it applies to Irish workers covered by the legislation.

Section 21 provides for an amendment of section 14(2) of the Protection of Employment Act, 1977 — relating to collective redundancies — to increase the amount of the fine provided for therein from £3,000 to £10,000, in regard to an indictable offence.

Financial implications

It is expected that certain costs will arise in connection with the implementation of this legislation in the education sector through:

- (i) the implementation of the Bill for the large number of part-time staff in the sector, and
- (ii) the additional staffing needed for the increased administrative tasks associated with the implementation of the Bill.

The adoption of the Bill is also likely to lead to increased administrative costs for certain employers. However, it is considered that this factor is not sufficient to outweigh the overall benefits, in terms of social policy, which will accrue from the adoption of the Bill. In any event, the Bill is required to implement an E.U. Directive, and this is obligatory.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Nollaig, 2000.*