



# **DÁIL ÉIREANN**

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## **AN BILLE UM CHAOMHNÚ FOSTAÍOCHTA (COMHIOMARCAÍOCHTAÍ EISCEACHTÚLA AGUS NITHE GAOLMHARA) 2007**

## **PROTECTION OF EMPLOYMENT (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) BILL 2007**

## **LEASUITHE COISTE COMMITTEE AMENDMENTS**

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# DÁIL ÉIREANN

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## AN BILLE UM CHAOMHNÚ FOSTAÍOCHTA (COMHIOMARCAÍOCHTAÍ EISCEACHTÚLA AGUS NITHE GAOLMHARA) 2007 —AN CHOISTE

### PROTECTION OF EMPLOYMENT (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) BILL 2007 —COMMITTEE STAGE

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#### *Leasuithe Amendments*

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#### SECTION 1

1. In page 5, subsection (1), lines 34 to 36, to delete “Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007” and substitute the following:

“Protection of Employment (Collective Redundancies) (Amendment) Act 2007”.

—Phil Hogan.

#### SECTION 2

2. In page 6, between lines 15 and 16, to insert the following:

“ “employee representatives” has the same meaning as in section 2(1) of the Protection of Employment Act 1977;”.

—An tAire Fiontar, Trádála agus Fostaíochta.

#### SECTION 3

3. In page 6, before section 3, but in Part 1, to insert the following new section:

“3.—(1) Subject to this section, *Part 2* has effect for permanent duration from the commencement of this Act.

(2) The Minister shall conduct a review of *Part 2* every five years in order to ascertain that the provisions of this legislation remain effective in ensuring that the rights of workers are upheld in cases of exceptional collective redundancies.”.

—Arthur Morgan.

4. In page 6, subsection (2), line 39, after “period” where it firstly occurs to insert “or periods”.

—Ruairí Quinn.

5. In page 6, subsection (2)(a), line 41, before “both” to insert “both Houses of the Oireachtas or”.

—Ruairí Quinn.

6. In page 6, subsection (2)(a), line 41, to delete “both”.

—Phil Hogan.

[ SECTION 3 ]

7. In page 6, subsection (2)(a), line 41, to delete “Unions and” and substitute “Unions,”.

—Phil Hogan.

8. In page 6, subsection (2)(a), line 42, after “Confederation” to insert “and Chambers Ireland”.

—Phil Hogan.

9. In page 6, subsection (2)(a), line 42, to delete “requested” and substitute “not objected to”.

—Ruairí Quinn.

*Section opposed.*

—Arthur Morgan.

SECTION 4

10. In page 7, before section 4 but in Part 2, to insert the following new section:

“4.—(1) For the purpose of this Act, “collective redundancies” means dismissals which are effected for a reason specified in *subsection (2)* (other than a reason related to the individual employees dismissed) where in any period of 30 consecutive days the number of such dismissals is—

- (a) at least 5 in an establishment normally employing more than 20 and fewer than 50 employees,
- (b) at least 10 in an establishment normally employing at least 50 but fewer than 100 employees,
- (c) at least 10 per cent of the number of employees in an establishment normally employing at least 100 but fewer than 300 employees, and
- (d) at least 30 in an establishment normally employing 300 or more employees.

(2) The reasons referred to in *subsection (1)* are—

- (a) that the employer concerned has ceased, or intends to cease, to carry on the business for the purposes of which the employees concerned were employed by him, or has ceased or intends to cease, to carry on that business in the place where those employees were so employed,
- (b) that the requirements of the business for employees to carry out work of a particular kind in the place where the employees concerned were so employed have ceased or diminished or are expected to cease or diminish,
- (c) that the employer concerned has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employees concerned had been employed (or had been doing before their dismissal) to be done by other employees or otherwise,
- (d) that the employer concerned has decided that the work for which the employees concerned had been employed (or had been doing before their dismissal) should henceforward be done in a different manner for which those employees are not sufficiently qualified or trained,

[ SECTION 4 ]

(e) that the employer concerned has decided that the work for which the employees concerned had been employed (or had been doing before their dismissal) should henceforward be done by persons who are also capable of doing other work for which those employees are not sufficiently qualified or trained.

(3) (a) In this section “establishment” means—

(i) where an employer carries on business at a particular location, that location, or

(ii) where an employer carries on business at more than one location, each such location.

(b) For the purposes of the definition in paragraph (a) of this subsection, each workplace, factory, mine, quarry, dockyard, wharf, quay, warehouse, building site, engineering construction site, electricity station, gas works, water works, sewage disposal works, office, wholesale or retail shop, hotel, restaurant, café, farm, garden or forest plantation shall be taken to be a separate location.

(c) In ascertaining for the purposes of this section the total number of employees employed in an establishment, account shall be taken of those employees who are based at the establishment but who also perform some of their duties elsewhere.

(d) The Minister may, for the purpose of extending the provisions of this section by order amend paragraph (a), (b) or (c) of this subsection and may by order amend or revoke such an order.

(4) For the purposes of this section, “business” includes a trade, industry, profession or undertaking, or any activity carried on by a person or body of persons, whether corporate or unincorporate, or by a public or local authority or a Department of State, and the performance of its functions by a public or local authority or a Department of State.”.

—Phil Hogan.

11. In page 7, subsection (1), line 18, after “1967” to insert “(inserted by *section 16*)”.

—Ruairí Quinn.

12. In page 7, lines 19 to 22, to delete subsection (2) and substitute the following:

“(2) For the avoidance of doubt, it is declared that this Part does not apply to—

(a) the employment of agency workers for temporary or recurring business needs, or

(b) the use of outsourcing, contracting-out or other forms of business restructuring,

in circumstances other than those referred to in section 7(2A) of the Redundancy Payments Act 1967.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

*Section opposed.*

—Phil Hogan.

[ SECTION 5 ]

SECTION 5

**13.** In page 7, subsection (1), line 23, after “a” to insert the following:

“body to be known as Painéal Iomarcaíochta or in the English language, as the”.

—Ruairí Quinn.

**14.** In page 7, subsection (1), line 24, after “Panel” to insert the following:

“which shall be independent in the operation of its functions and which shall have an independent secretariat”.

—Phil Hogan.

**15.** In page 7, subsection (4)(a), line 42, to delete “, not exceeding 3 years,”.

—Phil Hogan.

SECTION 6

**16.** In page 9, lines 4 to 15, to delete subsection (1) and substitute the following:

“6.—(1) A proposal to create collective redundancies may be referred to the Redundancy Panel—

(a) by employee representatives acting with the approval of the majority of those whom they represent who are affected by the redundancy proposal at any time during the period of 30 days, or

(b) by the employer concerned at any time during the period of 40 days,

referred to in section 9 or 12 of the Protection of Employment Act 1977 (as the case requires), by notice in writing addressed to the Chairman of the Panel in the care of the Secretary General and sent or delivered to the Secretary General at the principal office of the Department of Enterprise, Trade and Employment.”.

—Phil Hogan.

**17.** In page 10, subsection (3)(b), to delete lines 10 and 11.

—Arthur Morgan.

SECTION 8

**18.** In page 11, subsection (2), line 26, to delete paragraph (c).

—Arthur Morgan.

**19.** In page 11, subsection (2)(c), line 26, after “action” to insert “relevant to the dispute”.

—Ruairí Quinn.

SECTION 9

**20.** In page 12, between lines 6 and 7, to insert the following subsection:

“(2) The Protection of Employees (Employers’ Insolvency) Act 1984 is amended in section 4(1) by the insertion of the following after paragraph (d):

“(e) where an employer otherwise ceases to trade,”.

—Phil Hogan.

**21.** In page 12, between lines 6 and 7, to insert the following subsection:

[ SECTION 9 ]

“(2) (a) In cases of insolvency, any payments from the redundancy fund shall be paid directly to the employees and the Protection of Employees (Employers’ Insolvency) Act 1984 shall be amended accordingly.

(b) In this subsection, “redundancy fund” means the social insurance fund defined by Part III of the Redundancy Payments Act 1967.”

—Phil Hogan.

22. In page 12, lines 7 to 12, to delete subsection (2).

—Ruairí Quinn.

23. In page 12, line 20, after “payment” to insert “by the employer”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 10

24. In page 13, lines 13 to 18, to delete subsection (3) and substitute the following:

“(3) An employer who effects a dismissal in pursuance of a proposal for collective redundancies before the expiration of such of the periods specified in *subsection (1)* and in sections 9(3) and 12(1) of the Protection of Employment Act 1977 as are applicable is guilty of an offence and liable on conviction on indictment to a fine not exceeding €250,000 per individual dismissal.”

—Arthur Morgan.

25. In page 13, subsection (3), line 18, after “€250,000” to insert “per employee dismissed”.

—Ruairí Quinn.

SECTION 16

26. In page 14, line 38, after “State,” to insert the following:

“(except where the employer has an existing operation with established terms and conditions)”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 26

27. In page 18, to delete line 5 and substitute the following:

“(2A) Without prejudice to the applicability of any of the provisions of section 6 to the case, where—”.

—An tAire Fiontar, Trádála agus Fostaíochta.

28. In page 18, to delete lines 14 to 16 and substitute the following:

“in determining whether, in those circumstances, the dismissal is an unfair dismissal, the rights commissioner, the Tribunal or the Circuit Court, as the case may be, shall have regard, for that purpose only, to—”.

—An tAire Fiontar, Trádála agus Fostaíochta.