



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

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

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The Bill provides for the establishment of a Redundancy Panel, for the reference to it of certain proposed collective redundancies and for related action by the Minister for Enterprise, Trade and Employment. It also provides for the removal of the upper age limit for entitlement to redundancy payments; makes consequential amendments of the Protection of Employment Act 1977, the Redundancy Payments Act 1967, the Redundancy Payments Act 1971, the Redundancy Payments Act 1979, the Unfair Dismissals Act 1977 and the Employment Equality Act 1998; and makes further amendments of those Acts to update penalties and in other formal respects.

PROVISIONS OF THE BILL

Section 1 is a standard provision, which provides for the short title of the Act and the collective citation of Acts affected by it.

Section 2 provides definitions of terms used in the Act. The definition of “industrial action” combines the content of the definition of “strike” in section 8 of the Industrial Relations Act 1946 and that of “lock-out” in section 6 of the Redundancy Payments Act 1967. The definitions of “Minister” and “Secretary General” are self-explanatory.

Section 3 provides for the duration of effect of the Redundancy Panel and related matters. Under this section, the Redundancy Panel has effect only for the period of 3 years from the commencement of this Act. The Minister may, by order made before the expiration of that period or of any extension of it, extend that period for a further period of 3 years if both the Irish Congress of Trade Unions and the Irish Business and Employers Confederation have requested the extension and the Minister is satisfied that the continued operation of the Redundancy Panel would be conducive to the continued orderly conduct of industrial relations.

Section 4 sets out what constitutes exceptional collective redundancies for the purposes of this Act by reference to the Redundancy Payments Act 1967.

Section 5 provides for the establishment of the Redundancy Panel, procedures to be followed in appointing members to the Redundancy Panel and their reappointment. The conditions of membership are also set out in this section.

Section 6 provides for referral of cases to the Redundancy Panel by employee representatives or the employer concerned, by notice given in writing addressed to the Chairman of the Panel in the care of the Secretary General and delivered to the principal office of the Department of Enterprise, Trade and Employment.

The Secretary General shall forward the reference to the Chairman of the Panel. The Panel shall inform the Minister of the fact and invite affected parties to make submissions to it in relation to the proposal.

The Panel shall give notice in writing to the Minister that either requests the Minister to seek an opinion from the Labour Court on whether the proposal is a proposal to create collective redundancies or else states that the Panel is of the view that the conditions for the making of such a request have not been satisfied, and give a copy of that notice to the party from which the reference was received and other affected parties.

The Redundancy Panel may not make a request to the Minister unless it appears to the Panel that the proposed collective redundancies are exceptional collective redundancies and the Panel is satisfied that, in relation to the proposal, the party from which the reference was received has unsuccessfully sought to resolve the matter through local engagement.

The Panel must also be satisfied that the party from which the reference was received has acted reasonably and has not acted in a manner which has frustrated the possibility of agreement to restructuring or other changes necessary to secure the viability of the business of the employer and has not had recourse to industrial action since the proposal was referred to the Panel.

Section 7 provides that the Minister may, within 7 days of receiving a request from the Redundancy Panel to do so, request the Labour Court to issue an opinion as to whether collective redundancies proposed by an employer constitute exceptional collective redundancies. The Minister may also make a request to the Labour Court on his own initiative if it appears to him that the proposed collective redundancies are exceptional collective redundancies. The time limit in this latter case varies depending on whether the matter has been referred to the Redundancy Panel or not.

Section 8 provides for a hearing and the giving of an opinion by the Labour Court. The Labour Court shall, within 16 days of receiving a request, hold a hearing into the matter, and either—

- issue to the Minister its opinion whether the proposed collective redundancies are exceptional collective redundancies, or
- report to the Minister that it is unable to issue an opinion.

The Labour Court may not issue an opinion unless it is satisfied that the party from which the reference was received was unable to resolve the matter through local engagement and has not frustrated the possibility of agreement to restructuring, and that no industrial action on the part of that party is current.

No appeal shall lie from an opinion given by the Labour Court under this section, but the Employment Appeals Tribunal can make a decision on any question referred to it under section 39 of the Redundancy Payments Act 1967. The Minister shall, within 7 working days of receiving an opinion from the Labour Court, notify affected parties by such means as he considers appropriate.

Section 9 provides that, where the Labour Court issues an opinion that collective redundancies proposed by an employer are exceptional collective redundancies and, having proceeded with the dismissals on the same basis as in the relevant proposal, the employer applies to the Minister for a rebate under the Redundancy Payments Act 1967, the Minister shall have regard to the opinion of the Labour Court when considering the employer's application for the rebate.

If the Minister refuses to pay the rebate on the basis of the opinion of the Labour Court, the exemption from income tax provided by section 203 of the Taxes Consolidation Act 1997 does not apply in relation to lump sum payments made by the employer to employees dismissed.

Section 7 of the Unfair Dismissals Act 1977 has effect, with modifications, in relation to a dismissal that is one of a number of dismissals included in a collective redundancy that is determined by the Labour Court to be an exceptional collective redundancy. The compensation payable is such amount as is just and equitable but may not exceed pay for 208 weeks for an employee who had not more than 20 years continuous service or, in the case of an employee who had more than 20 years continuous service, pay for more than 260 weeks.

Section 10 provides for time limits before which dismissals may not take effect. An employer who effects a dismissal before the expiration of the period specified in section 10(1) or in section 9(3) or 12(1) of the Protection of Employment Act 1977 (as the case requires) is guilty of an offence and liable on conviction on indictment to a fine up to €250,000.

Section 11 provides for the amendment of section 2 of the Protection of Employment Act 1977 to update the definition of "Minister".

Section 12 provides for the amendment of section 9(3) of the Protection of Employment Act 1977 to reflect the decision of the European Court of Justice in the case of *Junk v. Kuhnel*.

Section 13 provides for the updating of penalties in the Protection of Employment Act 1977.

Section 14 provides for the amendment of section 2 of the Redundancy Payments Act 1967 to update the definition of "Minister".

Section 15 provides for the amendment of section 4 of the Redundancy Payments Act 1967 to entitle employees who have attained the age of 66 years to statutory redundancy payments.

Section 16 provides for the amendment of section 7 of the Redundancy Payments Act 1967. Subsection (2A) is inserted into section 7 to ensure that the dismissal of employees is not to be taken to be a dismissal by reason of redundancy if the dismissals are collective and are effected on a compulsory basis, and the dismissed employees are to be replaced at the same location or elsewhere in the State by other employees who are directly employed by the employer or other persons whose services are to be provided to that employer in pursuance of the other arrangements where those other persons perform,

or are to perform, essentially the same functions as the dismissed employees, and the terms and conditions of employment of those other persons are, or are to be, materially inferior to those of the dismissed employees.

Section 17 provides for amendment of section 38 of the Redundancy Payments Act 1967 to delete reference to powers no longer required to be exercised (former paragraphs (a) to (c)) and to authorise deciding officers to make decisions under sections 29 and 32 (in relation to certain payments from the Social Insurance Fund).

Section 18 provides for amendment of section 39(16) of the Redundancy Payments Act 1967 to eliminate the requirement that the reference of appeals to Employment Appeals Tribunal by deciding officers be made in a particular prescribed manner.

Section 19 provides for the updating of penalties under the Redundancy Payments Act 1967.

Section 20 provides for the repeal of section 3 of the Redundancy Payments Act 1971, which imposes an upper age limit for entitlement to redundancy payments.

Section 21 provides for the updating of penalties under the Redundancy Payments Act 1971.

Section 22 provides for the amendment of section 1 of the Redundancy Payments Act 1979 to update the definition of “Minister”.

Section 23 provides for the repeal of section 5 of the Redundancy Payments Act 1979, which amended section 3 of the Redundancy Payments Act 1971, now being repealed by section 20 of this Bill.

Section 24 provides for the amendment of section 1 of the Unfair Dismissals Act 1977 to update the definition of “Minister”.

Section 25 provides for a technical amendment of section 2 of the Unfair Dismissals Act 1977. It remakes a proviso inserted into subsection (2) by the Unfair Dismissals (Amendment) Act 1993 as new subsections (2A) and (2B). The proviso relates to an exception in certain circumstances to the general non-applicability of the Unfair Dismissal Acts 1977 to 2005 to the non renewal of fixed-term/specified-purpose contracts. The purpose of the amendment is to make it clear that the exception stated in the proviso covers all the types of fixed-term/specified purpose contracts described in section 2(2) and not simply those referred to in paragraphs (a) and (b).

Section 26 provides for the amendment of section 5 of the Unfair Dismissals Act 1977 by providing that, in cases where all the employees who are involved in a lock-out, strike or industrial action situation are dismissed, the reasonableness or otherwise of the actions of the parties is to be taken into account in determining whether the dismissals were unfair, including whether the parties have adhered to any grievance procedures.

Section 27 provides for the amendment of section 17 of the Employment Equality Act 1998. Subsection (1) is a technical provision to overcome the misdescription of an amendment made in 2004 and subsection (2) substitutes a new subsection (4) reflecting the abolition of the upper age limit for redundancy payments.

FINANCIAL AND STAFFING IMPLICATIONS

Administrative implications

Section 4 of the Bill provides that the Secretary General shall arrange for the provision to the Redundancy Panel of all secretarial and other services necessary for its efficient operation. The fees and expenses of the Redundancy Panel are expected to be minimal.

The cost to the Social Insurance Fund of bringing in over 66 year olds under the Redundancy Payments Acts is estimated to be in the region of €2.4 million per annum.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Márta 2007.*