



DÁIL ÉIREANN

AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ) 2008 PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ) 2008 —ROGHCHOISTE

PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 4, paragraph (b)(ii), line 4, to delete “definition” and substitute “definitions”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

2. In page 4, paragraph (b)(ii), between lines 4 and 5, to insert the following:

“ “ ‘corruptly’ includes acting with an improper purpose personally or by influencing another person, whether by means of making a false or misleading statement, by means of withholding, concealing, altering or destroying a document or other information, or by any other means;”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 4

3. In page 5, before section 4, to insert the following new section:

4.—The Act of 2001 is amended by inserting the following section after section 8:

“Insertion of new section 8A into Act of 2001.

“Protection for persons (including employees) reporting offences under *Prevention of Corruption Acts 1889 to 2010*.

8A.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her opinion that an offence under the *Prevention of Corruption Acts 1889 to 2010* has been or is being committed unless—

- (a) in communicating his or her opinion to that appropriate person did so—
 - (i) knowing it to be false, misleading, frivolous or vexatious, or
 - (ii) reckless as to whether it was false, misleading, frivolous or vexatious,

or

- (b) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading.

[SECTION 4]

(2) The reference in subsection (1) to liability in damages shall be construed as including a reference to liability to any other form of relief.

(3) A person who makes a communication under subsection (1), which the person knows, or ought reasonably to know, to be false, that a person has committed or is committing an offence under the *Prevention of Corruption Acts 1889 to 2010* shall be guilty of an offence.

(4) Subsection (1) is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is an appropriate person or not) of an opinion of the kind referred to in subsection (1).

(5) An employer, or any person acting on behalf of an employer, shall not penalise or threaten penalisation against an employee for—

(a) having formed an opinion of the kind referred to in subsection (1) and communicated it, whether in writing or otherwise, to an appropriate person unless the employee—

(i) in communicating his or her opinion to that appropriate person did so—

(I) knowing it to be false, misleading, frivolous or vexatious, or

(II) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(ii) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading,

or

(b) giving notice of his or her intention to do the thing referred to in paragraph (a).

(6) Schedule 1 shall have effect in relation to an alleged contravention of subsection (5).

(7) An employer who contravenes subsection (5) shall be guilty of an offence.

(8) A person guilty of an offence under subsection (3) or (7) shall be liable—

[SECTION 4]

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.

(9) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence referred to in subsection (8) as if, in lieu of the penalties specified in subsection (3)(a) of that section, there were specified therein the penalties provided for in subsection (8) (a) and the reference in subsection (2)(a) of that section to the penalties provided for by subsection (3) of that section shall be construed and have effect accordingly.

(10) Any person who, upon examination on oath or affirmation authorised under paragraph 3(1) of Schedule 1, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(11) A person to whom a notice under paragraph 3(2) of Schedule 1 has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

(12) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

(a) a person named in the document was, by a notice under paragraph 3(2) of Schedule 1, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,

(b) a sitting of the Labour Court was held on that day and at that time and place, and

(c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under subsection (11), be evidence of the matters so stated without further proof unless the contrary is shown.

(13) For the purposes of this section, a reference to ‘dismissal’ includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

[SECTION 4]

- (b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

(14) Schedule 2 shall have effect for the purposes of a communication referred to in this section made to an appropriate person who is a confidential recipient.

(15) Paragraphs (a), (c), (d), (e) and (f) of the definition of 'penalisation' in subsection (16) shall not be construed in a manner which prevents an employer from—

- (a) ensuring that the business concerned is carried on in an efficient and effective manner, or
- (b) taking any action required for economic, technical or organisational reasons.

(16) In this section—

'appropriate person', in relation to a communication referred to in this section made by a person, means a communication to—

- (a) in any case, a member of the Garda Síochána,
- (b) in any case where the opinion concerned of the kind referred to in subsection (1) was formed in the course of the person's employment—
 - (i) the person's employer, or
 - (ii) a person nominated by such employer as the person to whom a communication of that kind may be made,
- (c) without prejudice to the generality of paragraphs (a) and (b), in any case where the person is in a state other than the State—
 - (i) a diplomatic or consular officer of the State who is in that state, or
 - (ii) a member of a law enforcement agency of that state,or
- (d) in any case where the person wishes to make the communication in confidence, to a confidential recipient;

'confidential recipient' has the meaning assigned to it by paragraph 1 of Schedule 2;

'contract of employment' means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

[SECTION 4]

‘employee’ means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

‘employer’, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

- (a) a person (other than an employee of that person) under whose control and direction an employee works, and
- (b) where appropriate, the successor of the employer or an associated employer of the employer;

‘penalisation’ means any act or omission by an employer, or a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, including selection for redundancy,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.””.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[*Acceptance of this amendment involves the deletion of section 4 of the Bill.*]

4. In page 5, before section 4, to insert the following new section:

“4.—The Act of 2001 is amended by inserting the following sections after section 8:

Interpretation. 8A.—(1) In this Part, ‘employee’ and ‘employer’ have the same meaning as in the Unfair Dismissals Acts 1997-2007.

[SECTION 4]

(2) In this Part, 'penalise' includes any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment and which is consequent upon a protected disclosure by the employee.

(3) For the purposes of subsection (2) but without prejudice to its generality, penalization includes suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal, demotion or loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages or a change in working hours, imposition of any discipline, reprimand or other penalty (including a financial penalty), coercion, intimidation or harassment, injury, damage or loss, and threats of reprisal.

(4) Subsection (2) shall not be construed in a manner which prevents an employer from ensuring that the business of the body concerned is carried on in an efficient and effective manner.

Protected disclosure.

8B.—Where an employee makes, in good faith and not for personal gain, a disclosure to an authorised person and the employee has reasonable grounds for believing that it will show one or more of the following:

- (a) that a criminal offence has been committed, is being committed, or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health and safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged;
- (f) that there is conduct which has led, is leading or is likely to lead to a misuse or substantial waste of public funds;
- (g) that there is conduct leading to concern about questionable accounting, internal controls or auditing matters;
- (h) that the health or welfare of a person who is receiving a health or personal social service has been, is or is likely to be at risk;
- (i) that the actions of any person employed has posed, is posing or is likely to pose a risk to the health or welfare of the public;

[SECTION 4]

- (j) that the information tending to show any matter falling within any one of the preceding paragraphs has been, is likely to be deliberately concealed or destroyed;

then disclosure shall be a protected disclosure under this Act.

Official Secrets Act. 8C.—Notwithstanding anything in the Official Secrets Act 1963 a disclosure of information to which section 15 relates shall be a protected disclosure if the employee makes the disclosure in accordance with section 17.

Disclosure to prescribed person. 8D.—(1) A qualifying disclosure is made in accordance with this section if the worker—

- (a) makes the disclosure in good faith to a person prescribed by Regulation made by the Minister for Finance for the purposes of this section, and

(b) reasonably believes—

- (i) that the relevant disclosure falls within any description of matters in respect of which that person is so prescribed, and

- (ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each descriptions, is or are prescribed.

Protection from civil liability of persons who have made a protected disclosure. 8E.—(1) A person is not liable in damages in consequence of a protected disclosure.

(2) Subsection (1) does not apply in respect of a person who makes a disclosure knowing it to be reckless as to whether it is false, misleading, frivolous or vexatious or who, in connection with a disclosure, furnishes information that the person knows to be false or misleading.

(3) The reference in subsection (1) to liability in damages shall include a reference to any other form of relief.

Protection of employees from penalisation for having made a protected disclosure. 8F.—(1) An employer shall not penalise an employee for making a protected disclosure.

(2) A contravention of subsection (1) is a ground of complaint by an employee to a rights commissioner.

(3) In proceedings before a rights commissioner or the Labour Court in relation to a complaint of a contravention of subsection (1), it shall be presumed, unless the contrary is proved, that the disclosure was a protected disclosure.

[SECTION 4]

(4) If the contravention of subsection (1) was a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee both under this section and under those Acts.

(5) A rights commissioner hearing a complaint under this section shall—

- (a) give the parties an opportunity to be heard and to present any evidence relevant to the complaint,
- (b) give a decision in writing, and
- (c) communicate it to the parties.

(6) A decision of a rights commissioner under subsection (5) shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the employer to comply with subsection (1) and to take specified steps;
- (c) order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

(7) A rights commissioner shall not entertain a complaint under this section unless it is presented to him or her within the period of 12 months beginning on the date of the contravention, unless there are circumstances that prevented the presentation of the complaint within that period, in which case the rights commissioner may allow such further period for the presentation of a complaint under this section, not exceeding 6 months from the expiration of the period of 12 months, as the rights commissioner considers reasonable.

(8) (a) A complaint under this section shall be presented to a rights commissioner by giving notice of it in writing to him or her and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Finance.

(b) A copy of a notice under paragraph (a) shall be given to the employer by the rights commissioner.

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

(10) A rights commissioner shall furnish the Labour Court with a copy of any decision given by the commissioner under this section.

(11) A party to proceedings under this section before a rights commissioner may appeal to the Labour Court from a decision of the rights commissioner and, on an appeal, the Labour Court shall —

[SECTION 4]

- (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and
- (c) communicate the determination to the parties.

(12) (a) An appeal under this section shall be initiated by the giving, by the party appealing, within 6 weeks of the date on which the decision to which it relates was communicated to that party, of a notice in writing to the Labour Court under subsection (11) and stating the intention of that party to appeal.

(b) A copy of a notice under paragraph (a) shall be given by the Labour Court to the other party as soon as practicable after the receipt of the notice by the Labour Court.

(13) The following matters, or the procedures to be followed in relation to those matters, shall be determined by the Labour Court, namely:

- (a) the procedure in relation to the initiation and the hearing by the Labour Court of appeals under this section;
- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under subsections (12) and (14);
- (f) any matters consequential on, or incidental to, the matters referred to in paragraphs (a) to (e).

(14) (a) The Minister for Finance, may, at the request of the Labour Court, refer a point of law arising in proceedings under this Part before it to the High Court for determination.

(b) A party to proceedings before the Labour Court may appeal to the High Court from a determination of the Labour Court on a point of law.

(c) The determination of the High Court under this subsection is final and conclusive.

(15) (a) Where a decision of a rights commissioner under subsection (6)(b) or (c) has not been implemented by the employer in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee may bring the complaint before the Labour Court and the

[SECTION 4]

Labour Court shall, without hearing the employer or any evidence (other than in relation to the matters), make a determination to the like effect as the decision.

- (b) The bringing of a complaint before the Labour Court by virtue of this subsection shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(16) Proceedings under this section before the Labour Court shall be heard otherwise than in public.

(17) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under paragraphs (a), (b), (c), (e) or (f) of subsection (13) (not being a determination as respects a particular appeal under this section) or subsection (15)(b).

Proceedings
before Labour
Court.

8G.—(1) The Labour Court shall, on the hearing of any matter referred to it under this Part, have power to take evidence on oath and for that purpose may cause oaths to be administered to persons attending as witnesses at the hearing.

(2) Any person who, upon examination on oath authorised under this section, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false is guilty of an offence and, on conviction, is liable to the penalties for wilful and corrupt perjury.

(3) The Labour Court may, by giving notice in that behalf in writing to any person, require the 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 Labour Court under this section or to produce any documents in his or her possession, custody or control which relate to any such matter.

(4) A notice under subsection (3) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides.

(5) A person to whom a notice under subsection (3) has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Enforcement of
determinations
of Labour
Court.

8H.—(1) (a) If an employer fails to carry out in accordance with its terms a relevant determination of the Labour Court under section 20 within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by the employee, without hearing the employer or any evidence (other than in relation to the

[SECTION 4]

matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

- (b) In paragraph (a), a ‘relevant determination’ means a determination 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 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 its abandonment.

(2) The Circuit Court may, in an order under this section relating to the payment of compensation, if in all the circumstances it considers it appropriate to do so, direct the employer to pay to the employee 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 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer ordinarily resides or carries on any profession, trade, business or occupation.

Evidence of failure to attend before or give evidence or produce documents to Labour Court.

8I.—A document purporting to be signed by the chairman or a vice-chairman of the Labour Court stating that—

- (a) a person named in the document was, by a notice under section 20 required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document, shall, in a prosecution of the person under section 20, be evidence of the matters so stated without further proof.

Continuity of employer’s business.

8J.—References in this Part to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to ownership of the business.

Making false reports.

8K.—(1) A person who makes a disclosure which the person knows or reasonably ought to know to be false is guilty of an offence.

- (2) A person guilty of an offence under this section is liable:

[SECTION 4]

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was committed or, if later, 2 years from the date on which evidence that, in the opinion of a member of the Garda Síochána, is sufficient to justify the bringing of the proceedings.

(4) For the purposes of subsection (3) of this section, a certificate signed by a Superintendent of the Garda Síochána as to the date on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge is *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed is deemed to be so signed and shall be admitted as evidence without proof of the signature of the Superintendent purporting to sign the certificate.”

—Charles Flanagan.

5. In page 5, line 18, after “opinion” to insert “or suspicion”.

—Pat Rabbitte.

6. In page 5, line 20, to delete “has been or is being” and substitute “may have been or may be being”.

—Pat Rabbitte.

Section opposed.

—Charles Flanagan.

SECTION 5

7. In page 8, before section 5, to insert the following new section:

“Amendment of section 9 of Act of 2001.

5.—The Act of 2001 is amended by substituting the following section for section 9:

“Offences — general.

9.—(1) Where an offence under the relevant Acts has been committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

that person shall also be guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

[SECTION 5]

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in respect of the acts or defaults of a member in connection with the member's functions of management as if the member were a director or manager of the body corporate.

(3) Subsections (1) and (2) shall, with any necessary modifications, apply in respect of offences under the relevant Acts committed by an unincorporated body.

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under the relevant Acts to which that provision applies may be instituted—

(a) within 12 months from the date on which the offence was committed, or

(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(5) For the purposes of subsection (4), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(6) In this section, 'relevant Acts' means the *Prevention of Corruption Acts 1889 to 2010*.”.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 5 of the Bill.]

SECTION 6

8. In page 8, before section 6, to insert the following new section:

“Insertion of new Schedules into Act of 2001.

6.—The Act of 2001 is amended by inserting the following Schedules after section 10:

“SCHEDULE 1

REDRESS FOR CONTRAVENTION OF SECTION 8A(5)*

Complaints to rights commissioner.

[SECTION 6]

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, his or her parent or guardian) or, with the consent of the employee, any trade union of which the employee is a member may present a complaint to a rights commissioner that his or her employer has contravened section 8A(5)* in relation to the employee and it shall not be necessary for the employee to have at least one year's continuous service with the employer concerned in order to present such complaint.

(2) Where a complaint under subparagraph (1) is made, the rights commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) notify the parties of that decision.

(3) A decision of a rights commissioner under subparagraph (2) shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the employer to take a specified course of action, which may include, in a case where a penalisation constitutes a dismissal within the meaning of section 8A(13)*, re-instatement or re-engagement, with or without compensation, as the rights commissioner may consider appropriate;
- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977;

and the references in clauses (b) and (c) to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding subparagraph (4), a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in subparagraph (4) (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Enterprise, Trade and Innovation.

(7) A copy of a notice under subparagraph (6) shall be given to the other party concerned by the rights commissioner.

[SECTION 6]

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

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under subparagraph (2).

Appeals from decisions of rights commissioner.

2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under paragraph 1(2) and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 42 days (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under clauses (e) and (f) of subparagraph (4) and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under subparagraph (2) shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;
- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under subparagraph (2); and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Labour Court may refer a point of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

Paragraphs 1 and 2: supplemental provisions.

3. (1) The Labour Court shall, on the hearing of any appeal referred to it under paragraph 2, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation.

[SECTION 6]

(2) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and—

(a) to give evidence in relation to any matter appealed to the Labour Court under paragraph 2, or

(b) to produce any document specified in the notice relating to the matter in the person's possession or power,

or both.

(3) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

(4) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(5) The bringing of a complaint before the Labour Court under subparagraph (4) shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.

(6) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of clauses (a), (b), (c), (d), (e) and (f) of subparagraph (4) of paragraph 2 (not being a determination as respects a particular appeal under that paragraph) and subparagraph (5).

(7) In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that section 8A(5)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

(8) (a) If penalisation of an employee, in contravention of section 8A(5)*, constitutes a dismissal of the employee, as referred to in paragraph (a) of the definition of 'penalisation' in section 8A(16)*, the employee may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if he or she does so, such dismissal may not be presented to a rights commissioner under paragraph 1(1).

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, his or her parent or guardian) presents a complaint to a rights commissioner under paragraph 1(1) in respect of a dismissal referred to in clause (a), the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.

[SECTION 6]

Enforcement of determinations of Labour Court.

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under paragraph 1 within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by—

- (a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, his or her parent or guardian), or
- (b) with the consent of the employee, any trade union of which the employee is a member,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in subparagraph (1) to a determination of the Labour Court is a reference to a determination 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 in that subparagraph to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as a reference to the date of such abandonment.

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned 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 part of the period beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is complied with.

(4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

Interpretation.

5. Section 8A(16)* shall apply to the interpretation of this Schedule as it applies to the interpretation of section 8A*.

SCHEDULE 2

PROVISIONS APPLICABLE IN CASE OF COMMUNICATIONS
REFERRED TO IN SECTION 8A* MADE IN CONFIDENCE

Definitions.

1. In this Schedule—

‘alleged relevant offence’, in relation to a confidential communication, means the offence under the *Prevention of Corruption Acts 1889 to 2010* alleged in the communication;

‘appropriate person’ has the meaning assigned to it by section 8A(16)*;

[SECTION 6]

‘civilian’ means a member of the civilian staff of the Garda Síochána;

‘Commissioner’ means—

- (a) the Commissioner of the Garda Síochána, or
- (b) a deputy commissioner, or an assistant commissioner, authorised under section 32 of the Garda Síochána Act 2005 to perform the functions of the Commissioner;

‘confidential communication’ means a communication referred to in section 8A* made to an appropriate person who is a confidential recipient;

‘confidential communicator’, in relation to a confidential communication, means the person who made the confidential communication;

‘confidential recipient’ means a person appointed under paragraph 2 to receive confidential communications;

‘member’ means—

- (a) a member of the Garda Síochána, or
- (b) a member of the Police Service of Northern Ireland appointed to a rank in the Garda Síochána under section 52 or 53 of the Garda Síochána Act 2005.

Appointment of confidential recipients.

2. The Commissioner may appoint a member or civilian, or members or civilians, as a confidential recipient or recipients to receive confidential communications.

Confidential communication.

3. (1) Where a confidential communication has been made to a confidential recipient, the confidential communicator shall disclose to the recipient any document, record or information in his or her possession or control which relates to the alleged relevant offence.

(2) Information disclosed under subparagraph (1) shall be in such form as the confidential recipient may require.

(3) A confidential communication may not be made anonymously.

Transmission of confidential communication.

4. Where a confidential communication has been made to a confidential recipient, the recipient shall, as soon as is practicable, transmit the communication to the Commissioner.

Commissioner, etc., must take steps to ensure that identity of confidential communicator is not disclosed.

5. Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the Commissioner, and any person acting on his or her behalf, in examining the communication or investigating the alleged relevant offence, shall take all practicable steps to ensure that the identity of the confidential communicator is not disclosed.

[SECTION 6]

Protection of confidential communicator's identity.

6. (1) Where a confidential communication has been made to a confidential recipient, the recipient may disclose the identity of the confidential communicator to the Commissioner only if each one of the following provisions is complied with:

- (a) the Commissioner—
 - (i) must believe that knowledge of the identity of the communicator is essential for the proper examination of the communication or the investigation of the alleged relevant offence;
 - (ii) must inform the recipient of his or her reasons for that belief;
- (b) the recipient must be satisfied that the Commissioner, before informing the recipient under clause (a)(ii), has taken all practicable steps to advance the examination of the communication or the investigation of the alleged relevant offence;
- (c) the recipient must have informed the communicator of the situation and considered the communicator's views regarding the disclosure of his or her identity; and
- (d) the recipient must further be satisfied that, having regard to all the circumstances, the disclosure is essential for the proper examination of the communication or the investigation of the alleged relevant offence.

(2) Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the identity of the confidential communicator may be disclosed by the Commissioner to a member or civilian only where the Commissioner believes that the disclosure is essential for the proper examination of the communication or the investigation of the alleged relevant offence.

(3) Subject to subparagraph (4), any member or civilian to whom the identity of a confidential communicator has been disclosed under subparagraph (2) may not disclose the identity to any other person without the authorisation in writing of the Commissioner.

(4) The Commissioner may give an authorisation referred to in subparagraph (3) only where he or she believes that it is essential for the proper examination of the confidential communication or the investigation of the alleged relevant offence.

(5) Unless otherwise authorised under this paragraph, a confidential recipient, a member, or a civilian, to whom the identity of a confidential communicator has been disclosed may disclose the identity only with the consent in writing of the confidential communicator or under an order of a court.”.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[*Acceptance of this amendment involves the deletion of section 6 of the Bill.*]

[*Note: This is a reference to the section proposed to be inserted by amendment No. 3.]