



DÁIL ÉIREANN

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

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM EILLIÚ A CHOSC (LEASÚ) 2008 —AN TUARASCÁIL

PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008 —REPORT

Leasuithe Amendments

1. In page 5, to delete lines 15 to 48, to delete pages 6 to 9 and substitute the following:

“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.

(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;
- (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.

(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 —

- (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 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 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:

(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.”

—Alan Shatter.

2. In page 5, line 21, after “opinion” to insert “or suspicion”.

—Pat Rabbitte.

3. In page 5, line 23, to delete “has been or is being” and substitute “may have been or may be being”.

—Pat Rabbitte.

4. In page 5, lines 40 and 41, to delete “, or ought reasonably to know,”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

5. In page 5, line 42, to delete “has committed or is” and substitute “may have committed or may be”.

—Pat Rabbitte.

6. In page 6, to delete lines 6 to 8 and substitute the following:

“(5) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for—”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

7. In page 6, line 9, after “opinion” to insert “or suspicion”.

—Pat Rabbitte.

8. In page 8, line 14, to delete “and effective”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

9. In page 9, line 25, after “or” to insert “by”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

10. In page 11, line 9, to delete “his or her parent or guardian” and substitute the following:

“the employee’s parent or guardian with his or her consent”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

11. In page 11, line 12, to delete “his or her” and substitute “the employee’s”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

12. In page 11, to delete lines 27 to 32 and substitute the following:

“(b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal within the meaning of section 8A(13), re-instatement or re-engagement;”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

13. In page 11, line 45, to delete “A rights” and substitute “Subject to subparagraph (10), a rights”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

14. In page 12, between lines 20 and 21, to insert the following:

“(10) Where a delay by an employee in presenting a complaint under this paragraph is due to any misrepresentation by the employer, subparagraph (4) shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee’s notice.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

15. In page 13, line 7, to delete “point” and substitute “question”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

16. In page 14, line 13, after “employee” to insert the following:

“(or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian with his or her consent)”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

17. In page 14, line 16, to delete “he or she” and substitute the following:

“the employee or his or her parent or guardian, as the case may be,”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

18. In page 14, lines 20 and 21, to delete “his or her parent or guardian” and substitute the following:

“the employee’s parent or guardian with his or her consent”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

19. In page 14, line 37, to delete “his or her parent or guardian” and substitute the following:

“the employee’s parent or guardian with his or her consent”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

20. In page 15, to delete lines 5 and 6 and substitute the following:

“on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

21. In page 16, to delete lines 32 to 44 and in page 17, to delete lines 1 to 33 and substitute the following:

“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 be satisfied that knowledge of the identity of the communicator is necessary 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 being so satisfied;

(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 necessary 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) a member,

(b) a civilian, or

(c) the Director of Public Prosecutions,

only where the Commissioner is satisfied that the disclosure is necessary for the proper examination of the communication or the investigation or prosecution 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 is satisfied that it is necessary for the proper examination of the confidential communication or the investigation or prosecution 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 consent in writing of the confidential communicator or under an order of a court.””.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.