



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

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 1 of Prevention of Corruption Act 1906.
 3. Amendment of section 7 of Act of 2001.
 4. Insertion of new section 8A into Act of 2001.
 5. Amendment of section 9 of Act of 2001.
 6. Insertion of new Schedule into Act of 2001.
 7. Short title and collective citation.
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ACTS REFERRED TO

Companies Acts

Criminal Procedure Act 1967	1967, No. 12
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c. 93
Prevention of Corruption (Amendment) Act 2001	2001, No. 27
Prevention of Corruption Act 1906	6 Edw. 7, c. 34
Prevention of Corruption Acts 1889 to 2005	
Prompt Payment of Accounts Act 1997	1997, No. 31
Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29
Unfair Dismissals Act 1977	1977, No. 10
Unfair Dismissals Acts 1977 to 2007	



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PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008

BILL

entitled

5 AN ACT TO AMEND THE PREVENTION OF CORRUPTION
ACT 1906 AND THE PREVENTION OF CORRUPTION
(AMENDMENT) ACT 2001, AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act, “Act of 2001” means the Prevention of Corruption Definition.
(Amendment) Act 2001.

2.—Section 1 (inserted by section 2 of the Act of 2001) of the Amendment of
Prevention of Corruption Act 1906 is amended— section 1 of
Prevention of
Corruption Act
1906.

15 (a) in subsection (2), by substituting “, consideration or advan-
tage” for “or consideration”, and

(b) in subsection (5)—

(i) in the definition of “agent”—

(I) in paragraph (c), in subparagraph (ix), by delet-
ing “and”, and

20 (II) in paragraph (c), by substituting the following
subparagraphs for subparagraph (x):

25 “(x) any other person employed by or
acting on behalf of the public
administration of any state
(other than the State), including
a person under the direct or
indirect control of the govern-
ment of any such state, and

30 (xi) a member of, or any other person
employed by or acting for or on
behalf of, any international
organisation established by an
international agreement between

states to which the State is not a party;”,

and

(ii) by inserting the following definition:

“ ‘state’, in relation to a state other than the State, 5
includes—

(a) a territory, whether in the state or outside
it, for whose external relations the state or
its government is wholly or partly
responsible, 10

(b) a subdivision of the government of the
state, and

(c) a national, regional or local entity of the
state.”.

Amendment of
section 7 of Act of
2001.

3.—Section 7 of the Act of 2001 is amended— 15

(a) in subsection (1)—

(i) by inserting “(whether or not the person is an agent)”
after “where a person”, and

(ii) by substituting “the relevant section” for “section 1
(inserted by section 2 of this Act) of the Act of 20
1906”, 20

and

(b) by substituting the following subsections for subsection
(2):

“(2) Subsection (1) shall apply only where the person 25
concerned is—

(a) an Irish citizen,

(b) an individual who is ordinarily resident in the
State,

(c) a company registered under the Companies 30
Acts,

(d) any other body corporate established under a
law of the State, or

(e) a relevant agent in any case where the relevant
agent does not fall within any of paragraphs (a) 35
to (d).

(3) In this section—

‘agent’ has the meaning assigned to it by subsection (5) of
the relevant section;

5 'ordinarily resident in the State', in relation to an individual, means the individual has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned under subsection (1);

'relevant agent' means a person who falls within paragraph (b) of the definition of 'agent' in subsection (5) of the relevant section;

10 'relevant section' means section 1 (inserted by section 2 of this Act and as amended by section 2 of the *Prevention of Corruption (Amendment) Act 2008*) of the Act of 1906."

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

Insertion of new section 8A into Act of 2001.

15 "Protection for persons (including employees) reporting offences under *Prevention of Corruption Acts 1889 to 2008*.

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 2008* has been or is being committed unless it is proved that the person has not acted reasonably and in good faith in forming that opinion and communicating it to that appropriate person.

25 (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.

30 (3) A person who states to an appropriate person that a person has committed or is committing an offence under the *Prevention of Corruption Acts 1889 to 2008* knowing the statement to be false commits an offence.

35 (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).

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

45 (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 if the employee has acted reasonably and in good faith in forming that opinion and communicating it, or

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

(6) The Schedule shall have effect for the purposes of subsection (5). 5

(7) An employer who contravenes subsection (5) commits an offence.

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

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or 10

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both. 15

(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. 20 25

(10) For the purposes of this section dismissal includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and 30

(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. 35

(11) Paragraph (b)(iii) of the definition of ‘penalisation’ in subsection (12) shall not be construed in a manner which prevents an employer from ensuring that the business concerned is carried on in an efficient and effective manner. 40

(12) In this section—

‘appropriate person’, in relation to a communication referred to in this section made by a person, means a communication to— 45

(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;

'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;

'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' includes—

- (a) 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
- (b) without prejudice to the generality of paragraph (a)—
 - (i) suspension, lay-off or dismissal, or the threat of suspension, lay-off or dismissal,
 - (ii) demotion or loss of opportunity for promotion,
 - (iii) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

- (iv) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (v) unfair treatment, including selection for redundancy, 5
- (vi) coercion, intimidation or harassment,
- (vii) discrimination, disadvantage or adverse treatment, 10
- (viii) injury, damage or loss, and
- (ix) threats of reprisal.”.

Amendment of section 9 of Act of 2001.

5.—Section 9(1) of the Act of 2001 is amended by substituting “*Prevention of Corruption Acts 1889 to 2008*” for “Prevention of Corruption Acts 1889 to 2001”. 15

Insertion of new Schedule into Act of 2001.

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

“SCHEDULE

REDRESS FOR CONTRAVENTION OF SECTION 8A(5)

Complaints to rights commissioner.

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) 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. 20 25

(2) Where a complaint under subparagraph (1) is made, the rights commissioner shall— 30

- (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 35
- (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: 40

- (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;
- (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 a reasonable cause.

(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 Employment.

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

(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 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 question 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.

5 (2) Any person who, upon examination on oath or affirmation authorised under subparagraph (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 commits an offence.

10 (3) 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

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

or both.

20 (4) A person to whom a notice under subparagraph (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 commits an offence.

25 (5) 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.

30 (6) 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, 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.

40 (7) The bringing of a complaint before the Labour Court under subparagraph (6) 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.

45 (8) 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) or (f) of subparagraph (4) of paragraph 2 (not being a determination as respects a particular appeal under that paragraph) and subparagraph (7).

50 (9) 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. 5

(10) If a penalisation of an employee, in contravention of section 8A(5), constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the employee in respect of that penalisation both under this Schedule and under those Acts. 10

(11) A person guilty of an offence under subparagraph (2) is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 15

(12) A person guilty of an offence under subparagraph (4) is liable on summary conviction to a fine not exceeding €5,000.

(13) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under subparagraph (2) or (4) may be instituted— 20

(a) within 12 months from the date on which the offence was committed, or 25

(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, 30

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

(14) For the purposes of subparagraph (13), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subparagraph 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 subparagraph 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. 35 40 45

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 to it in that behalf by— 50

(a) the employee concerned, or

(b) with the consent of the employee, any trade union of which the employee is a member,

5 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.

10 (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 references 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 references to the date of such abandonment.

20 (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 for the time being fixed by the Minister for Enterprise, Trade and Employment for the purposes of section 4(2) of the Prompt Payment of Accounts Act 1997 under section 10 of that Act for each day or part of a day 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.

35 (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 trade, business or occupation.

40 Interpretation. 5. Section 8A(12) shall apply to the interpretation of this Schedule as it applies to the interpretation of section 8A.”.

7.—(1) This Act may be cited as the Prevention of Corruption (Amendment) Act 2008. Short title and collective citation.

45 (2) The Prevention of Corruption Acts 1889 to 2005 and this Act may be cited together as the Prevention of Corruption Acts 1889 to 2008.