



# **DÁIL ÉIREANN**

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## **AN BILLE UM RIALÁIL GNÍOMHAIREACHTAÍ FOSTAÍOCHTA 2009 EMPLOYMENT AGENCY REGULATION BILL 2009**

### **LEASUITHE COISTE COMMITTEE AMENDMENTS**

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# DÁIL ÉIREANN

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## AN BILLE UM RIALÁIL GNÍOMHAIREACHTAÍ FOSTAÍOCHTA 2009 —ROGHCHOISTE

### EMPLOYMENT AGENCY REGULATION BILL 2009 —SELECT COMMITTEE

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#### *Leasuithe Amendments*

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#### SECTION 3

1. In page 7, subsection (1)(b), line 24, to delete “worker” and substitute “employee”.

—Leo Varadkar.

2. In page 7, subsection (1)(b), line 25, to delete “worker” and substitute “employee”.

—Leo Varadkar.

3. In page 7, subsection (1)(b), line 29, to delete “worker” and substitute “employee”.

—Leo Varadkar.

4. In page 7, between lines 35 and 36, to insert the following subsection:

“(3) For the purposes of this Act, a service provided by An Foras Áiseanna Saothair is not an employment agency service.”

—An tAire Fiontar, Trádála agus Nuálaíochta.

#### SECTION 9

5. In page 9, subsection (3)(b), line 15, to delete “3 years” and substitute “18 months”.

—Willie Penrose.

#### SECTION 10

6. In page 9, subsection (3)(c), line 31, to delete “established” and substitute “resident”.

—Leo Varadkar.

7. In page 9, subsection (3)(d)(i), line 35, to delete “established” and substitute “resident”.

—Leo Varadkar.

8. In page 10, subsection (3)(e)(i), line 1, to delete “established” and substitute “resident”.

—Leo Varadkar.

9. In page 10, subsection (7)(a), between lines 26 and 27, to insert the following:

“(i) the applicant was convicted of an offence under employment legislation including health and safety legislation.”

—Willie Penrose.

[ SECTION 10 ]

10. In page 11, subsection (7)(b), between lines 1 and 2, to insert the following:

“(iii) contravened a code of practice under *section 27*, or”.

—Willie Penrose.

11. In page 11, subsection (13)(a), line 27, to delete “established” and substitute “resident”.

—Leo Varadkar.

12. In page 11, subsection (13)(b), line 28, to delete “established” and substitute “resident”.

—Leo Varadkar.

13. In page 11, subsection (13), between lines 28 and 29, to insert the following:

“(c) a person who has a qualification in human resources, industrial relations, business or law.”.

—Leo Varadkar.

SECTION 11

14. In page 11, subsection (1), between lines 30 and 31, to insert the following:

“(a) the licensed employment agency concerned is convicted of an offence under employment legislation including health and safety legislation,”.

—Willie Penrose.

15. In page 11, subsection (1), between lines 40 and 41, to insert the following:

“(c) the licensed employment agency concerned has failed to comply with a provision of a code of practice under *section 27*,”.

—Willie Penrose.

SECTION 13

16. In page 12, subsection (1), lines 43 to 46 and in page 13, lines 1 to 3, to delete paragraph (b).

—Leo Varadkar.

SECTION 14

17. In page 14, subsection (2)(c)(ii), line 2, to delete “a principal office” and substitute “an office”.

—An tAire Fiontar, Trádála agus Nuálaíochta.

SECTION 15

18. In page 15, subsection (1), line 4, to delete “*subsection (9)(b)*” and substitute “*subsection (8)(b)*”.

—An tAire Fiontar, Trádála agus Nuálaíochta.

SECTION 16

19. In page 16, subsection (1), line 1, to delete “may,” and substitute “shall, from time to time,”.

—Willie Penrose.

[ SECTION 17 ]

SECTION 17

20. In page 17, subsection (1), line 3, to delete “may” and substitute “shall”.

—Willie Penrose.

SECTION 19

21. In page 17, between lines 36 and 37, to insert the following subsection:

“(2) A licensed employment agency that supplied agency workers to carry on work normally performed by workers who are engaging in lawful industrial action is guilty of an offence.”.

—Willie Penrose.

SECTION 21

22. In page 19, between lines 15 and 16, to insert the following subsection:

“(3) It shall be an offence for an employer to afford an agency worker less favourable pay or conditions than a comparable permanent worker who is or has been in the employer’s employment.”.

—Willie Penrose.

23. In page 19, between lines 22 and 23, to insert the following subsection:

“(4) A person who has been charged a fee in contravention of this section may recover the fee on demand from either the placement agency or the employer concerned. Where such demand is not complied with, the Minister may make an application to the District Court in a summary manner on behalf of the worker concerned in order to recover the fee from either the placement agency, the employer or both.”.

—Willie Penrose.

*Section opposed.*

—Leo Varadkar.

SECTION 26

24. In page 23, before section 26, but in Part 3, to insert the following new section:

“Prosecution *in absentia*.”

26.—(1) Where, at any stage of proceedings to which this section applies, a person fails, without reasonable excuse, to appear before the court before which the proceedings are for the time being taking place, the court may do any thing or make any order that it would be entitled to do or make had the person so appeared.

(2) Where, by virtue of a person’s failure to appear in proceedings to which this section applies, the person does not enter a plea (whether before the District Court or the trial judge), the trial of the person may proceed as though he or she had entered a plea of not guilty.

(3) This section applies to proceedings for an offence under this Act or a specified enactment against a person upon whom a document in respect of those proceedings is served—

(a) in accordance with subsection (1) of section 81 of the Act of 2008,

[ SECTION 26 ]

(b) otherwise than by post, pursuant to a request referred to in subsection (2) of that section, or

(c) in accordance with an arrangement to which subsection (4) of that section applies.

(4) In this section—

“Act of 2008” means the Criminal Justice (Mutual Assistance) Act 2008;

“document” means a document—

(a) to which subsection (1) of section 80 of the Act of 2008 applies, and

(b) that requires a person to appear as a defendant in proceedings for an offence.”.

—An tAire Fiontar, Trádála agus Nuálaíochta.

[Acceptance of this amendment involves the deletion of section 26 of the Bill.]

SECTION 30

**25.** In page 25, subsection (1), between lines 36 and 37, to insert the following:

“(a) engaging in trade union activity for the purpose of vindicating the rights of agency workers,”.

—Willie Penrose.

SECTION 33

**26.** In page 26, lines 35 to 42 and in page 27, lines 1 to 20, to delete subsections (3) to (7) and substitute the following:

“(3) The members of the Advisory Committee shall be appointed in the following manner:

(a) Where a vacancy arises in the membership of the Advisory Committee, the Minister shall submit the names of 7 people to the Chairperson of the Oireachtas Committee on Enterprise, Trade and Employment (which shall be referred to in this section as “the Committee”).

(b) The Minister shall not submit the name of any person who, in the opinion of the Minister, does not possess sufficient expertise in one or more of the following areas, namely human resources, industrial relations, business or law.

(c) A person to whom *paragraph (a)* applies shall, on the request of the Committee, give evidence to that Committee on—

(i) his or her suitability for appointment to the position of member of the Advisory Committee,

(ii) his or her qualifications for appointment to the position of member of the Advisory Committee,

(iii) such other matters pertaining only to the appointment of a member of the Advisory Committee.

[ SECTION 33 ]

- (d) The Committee shall be required to confirm or decline the nomination of a person under *paragraph (a)* to the Minister within 7 days of the evidence under *paragraph (c)* having been completed.
  - (e) Where the Committee confirms the nomination of a person under *paragraph (d)* the Minister shall order their appointment by resolution of Dáil Éireann.
  - (f) Where the Committee declines the nomination of a person under *paragraph (d)*, it shall be required to state to the Minister the reasons for its decision in subsequent private session of the Committee, where requested by the Minister.
  - (g) Where the Committee declines the nomination of a person under *paragraph (d)*, the Minister shall nominate two persons, who have not already been nominated under this section, for consideration in respect of each outstanding vacancy.
  - (h) Where the Committee declines the nomination of a person under *paragraph (d)*, and the Minister makes a submission under *paragraph (g)*, the Committee may invoke its powers under *paragraph (c)* in respect of the alternative nominees.
  - (i) Where the Committee declines the nomination of a person under *paragraph (d)*, and the Minister makes a submission under *paragraph (g)*, the Committee shall be required to make a recommendation from the alternative candidates submitted under *paragraph (g)* to fill the remaining vacancies on the Advisory Committee.
  - (j) The Chairperson of the Oireachtas Committee on Enterprise, Trade and Employment shall, with the approval of that Committee, nominate one of the appointed members as Chairperson of the Advisory Committee.
- (4) Notwithstanding any other act or provision, a person who is a civil servant is not eligible for any appointment to the Advisory Committee.
- (5) If a person, who is at the time of their appointment to any vacancy to which this section applies a member of staff of the Advisory Committee, they shall immediately resign their position as a member of staff of the Advisory Committee on appointment under this section.
- (6) The term of office of a member of the Advisory Committee shall be a period of five years.
- (7) An outgoing member of the Advisory Committee shall be eligible for reappointment, but shall not be reappointed more than once in any circumstances.
- (8) Each member of the Advisory Committee shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for Finance. The Minister shall notify the Committee of such conditions in advance of the appointment being made under *subsection (2)*.
- (9) Each member of the Advisory Committee may be paid such remuneration, if any, as the Minister with the consent of the Minister for Finance, determines. The Minister shall notify the Committee of such remuneration in advance of the appointment being made under *subsection (2)*.

[ SECTION 33 ]

(10) If a member of the Advisory Committee is personally interested in a particular matter with which the Advisory Committee is dealing, he or she shall inform the Minister accordingly and shall not act as a member during the consideration of the matter.

(11) (a) The Minister may remove from office a member of the Advisory Committee who has become incapable through ill-health of performing efficiently his or her duties as such member or whose removal appears to the Minister to be necessary in the interests of the effective and economical performance of the functions of the Advisory Committee.

(b) The Minister may not exercise his power under *paragraph (a)* unless he or she has received approval for such action from the Committee.

(c) Where the Minister removes a member of the Advisory Committee from office, he or she shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.

(12) A member of the Advisory Committee may resign his or her office.”.

—Leo Varadkar.

*Section opposed.*

—Leo Varadkar.

SECTION 34

27. In page 27, subsection (1), lines 39 and 40, to delete all words from and including “or” in line 39 down to and including “authority,” in line 40.

—Willie Penrose.

28. In page 27, subsection (1), line 40, to delete paragraph (d).

—Leo Varadkar.

29. In page 28, subsection (2), lines 3 and 4, to delete “or a member of a local authority”.

—Willie Penrose.

TITLE

30. In page 5, line 6, after “TO” to insert the following:

“GIVE EFFECT TO ILO CONVENTION NO 181 ON PRIVATE EMPLOYMENT AGENCIES;”.

—Willie Penrose.