



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

*Mar a tionscnaíodh
As initiated*

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

BILL

5

entitled

AN ACT TO PROVIDE FOR THE LICENSING OF EMPLOY-
MENT AGENCIES THAT CARRY ON BUSINESS IN THE
STATE; TO PROVIDE FOR THE RECOGNITION OF
EMPLOYMENT AGENCIES THAT ARE PERMITTED TO
10 CARRY ON BUSINESS IN CERTAIN COUNTRIES OF
THE EUROPEAN ECONOMIC AREA; TO REPEAL THE
EMPLOYMENT AGENCY ACT 1971; AND TO PROVIDE
FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Employment Agency Regu- Short title and
lation Act 2009. commencement.

(2) This Act shall come into operation on such day or days as the
20 Minister may appoint by order or orders either generally or with
reference to any particular purpose or provision and different days
may be so appointed for different purposes or provisions, and for
the repeal of different enactments (or provisions of enactments) and
the revocation of different regulations (or provisions of regulations)
25 effected by *section 9*.

2.—In this Act—

Definitions.

“Act of 1963” means the Companies Act 1963;

“Act of 1971” means the Employment Agency Act 1971;

“Advisory Committee” has the meaning assigned to it by *section 33*;

30 “authorised officer” means a person appointed to be an authorised
officer under *section 24*;

“contract of employment” means—

(a) a contract of service or apprenticeship, or

(b) a contract under which an individual agrees with an employment agency to do or perform any work or service for another person (whether or not that other person is a party to the contract),

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whether the contract is express or implied and, if express, whether it is oral or in writing;

“designated state” means a state designated by order of the Minister under *section 12*;

“EEA Agreement” has the same meaning as it has in the European Communities (Amendment) Act 1993;

“EEA state” means—

(a) a member state of the European Communities (other than the State), or

(b) a state (other than a member state of the European Communities) that is a contracting party to the EEA Agreement;

“employee” means a person who is employed under a contract of employment;

“employer” means a person who employs another person under a contract of employment;

“employment agency” means—

(a) a placement agency, or

(b) a worker hire agency;

“employment agency licence” has the meaning assigned to it by *section 10(1)*;

“hirer undertaking” has the meaning assigned to it by *section 3(1)(b)*;

“licensed employment agency” means a person in respect of whom a licence under *section 10* is for the time being in force;

“Minister” means the Minister for Enterprise, Trade and Employment;

“placement agency” has the meaning assigned to it by *section 3(1)(a)*;

“prescribed” means prescribed by regulations made by the Minister;

“recognised employment agency” means a person who, under the law of a designated state, is permitted to carry on the business of an employment agency or provide employment agency services in that state;

“record” includes, in addition to a record in writing—

(a) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid

of some other instrument) of being reproduced in visual form, and

(c) a photograph, chart or map,

and any reference to a copy of a record includes—

- 5 (i) in the case of a record to which *paragraph (a)* applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which *paragraph (b)* applies, a still reproduction of the images embodied therein, and
- 10 (iii) in the case of a record to which both of those paragraphs apply, such a transcript together with such a still reproduction;

“specified enactment” means an enactment specified in *Schedule 1*;

“worker hire agency” has the meaning assigned to it by *section 3(1)(b)*.

15 **3.—(1)** For the purposes of this Act, each of the following is an employment agency service: Employment agency service.

- (a) a service provided by a person (in this section referred to as a “placement agency”) that consists of the effecting of introductions of individuals to other persons for the purpose of the employment of any of those individuals by any of those other persons under a contract of employment to which the placement agency is not a party; or
- 20
- (b) the doing of any act by a person (in this Act referred to as a “worker hire agency”) pursuant to an agreement, whether in writing or not, between the worker hire agency and another person that provides for the carrying out of work for, or the provision of a service to, a person (in this Act referred to as the “hirer undertaking”) by employees of the worker hire agency, provided that those employees carry out the work or provide the service under the direction and supervision of the hirer undertaking.
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(2) For the purposes of this Act, a person carries on the business of an employment agency if the business carried on by him or her consists of or includes the provision of employment agency services.

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4.—(1) The Minister may make regulations providing for any matter referred to in this Act as prescribed or to be prescribed. Regulations.

(2) The Minister may make regulations in relation to—

- 40 (a) the making of applications under *section 10* including the form of such applications, or
- (b) the form of an employment agency licence and the information that should be specified therein.

(3) The Minister may prescribe a fee or fees in respect of applications under *section 10*.

(4) A fee prescribed under *subsection (3)*, shall not exceed such amount as is sufficient to defray the cost incurred by the Minister in the performance of his or her functions in relation to an application under *section 10*.

Laying of orders and regulations before Houses of Oireachtas.

5.—Every order (other than an order under *section 1(2)*) and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

6.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Service of documents.

7.—(1) A notice, direction or other document under this Act shall be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

(2) For the purposes of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or principal place of business.

Offences.

8.—(1) A person guilty of an offence under this Act 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
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person being a director, manager, secretary or other officer of the body corporate, or a person who purported to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

5 (4) References in section 382 of the Act of 1963 to a company shall, for the purposes of this Act, be construed as including references to a body corporate (whether or not a company within the meaning of that section) charged on indictment with an offence.

9.—(1) The Act of 1971 is repealed.

Repeals and
revocations.

(2) All regulations made under the Act of 1971 are revoked.

10 (3) A licence granted under the Act of 1971 that was in force immediately before the commencement of this section shall, after such commencement, continue in force as if granted under *section 10* until—

(a) the expiration of the period in respect of which the licence would but for *subsection (1)* have remained in force, or

15 (b) the expiration of 3 years from the commencement of this section,

whichever occurs first, and may be revoked accordingly.

PART 2

REGULATION OF EMPLOYMENT AGENCIES

20 **10.—(1)** An eligible person may apply to the Minister for a licence (in this Act referred to as an “employment agency licence”) authorising him or her to carry on the business of an employment agency and provide employment agency services in the State. Licence to operate as employment agency in State.

25 (2) The Minister shall not grant an employment agency licence to a person who is not an eligible person.

(3) An application under this section shall be in such form as may be prescribed and shall—

(a) be in writing,

30 (b) specify the name of the applicant, including any name under which the applicant proposes to carry on business,

(c) in the case of an applicant who is established in the State, specify the address of his or her principal office or principal place of business in the State,

(d) in the case of an applicant who—

35 (i) is established in an EEA state, and

(ii) has a principal office or principal place of business in the State,

specify the address of his or her principal office or principal place of business in the State,

40 (e) in the case of an applicant who—

- (i) is established in an EEA state, and
 - (ii) does not have a principal office or principal place of business in the State,
 - specify the address of his or her principal office or principal place of business in that EEA state, 5
 - (f) be accompanied by a tax clearance certificate issued by the Revenue Commissioners in respect of the applicant,
 - (g) contain such other information as may be prescribed,
 - (h) be accompanied by such fee (if any) as may be prescribed under *section 4(3)*. 10
- (4) Subject to *subsections (2), (6) and (7)*, the Minister shall, upon receiving an application under this section, grant to the applicant an employment agency licence permitting him or her to carry on the business of an employment agency and provide employment agency services in the State. 15
- (5) The Minister may, when granting an employment agency licence, attach such conditions as he or she considers appropriate to the licence.
- (6) The Minister shall refuse to grant an employment agency licence if, in respect of the application, the applicant has failed to comply with *subsection (3)* or, in purported compliance with that subsection, has provided information to the Minister that is false or misleading in a material respect. 20
- (7) The Minister may refuse to grant an employment agency licence if— 25
- (a) in the 3 years immediately preceding the application—
 - (i) the applicant was convicted on indictment of an offence,
 - (ii) the licensed employment agency concerned was convicted of an offence in a state other than the State, and the acts or omissions of which that offence consisted would, if committed in the State, have constituted an offence under the law of the State and be prosecutable—
 - (I) on indictment, or 35
 - (II) summarily or, at the discretion of the Director of Public Prosecutions, on indictment,
 - (iii) an employment agency licence, that had been granted to the applicant before the application concerned, was revoked under *section 11*, or 40
 - (b) the Minister is satisfied, in the case of an applicant who is a licensed employment agency, that the applicant has—
 - (i) failed or refused to comply with conditions attached to an employment agency licence granted to him or her, 45

- (ii) contravened a direction under *section 16*, or
- (iii) contravened a provision of this Act or regulations made under this Act, whether or not he or she has been convicted of an offence.

5 (8) Where the Minister makes a decision under this section he or she shall—

(a) in the case of a decision to grant an employment agency licence, deliver the licence to the applicant forthwith, or

10 (b) in the case of a decision to refuse to grant an employment agency licence, notify the applicant forthwith in writing of the refusal and the reasons for the refusal.

(9) Subject to *subsection (10)* an employment agency licence shall remain in force for a period of 3 years commencing on the date on which the licence was granted.

15 (10) If, before the expiration of an employment agency licence, the licensed employment agency concerned makes an application under this section, that licence shall remain in force until the Minister makes a decision under this section in relation to the application.

20 (11) A person who, in applying for an employment agency licence, knowingly makes a statement or provides information to the Minister that is false or misleading in a material respect, shall be guilty of an offence.

(12) A licensed employment agency that fails to comply with the employment agency licence in respect of him or her or a condition
25 attached thereto shall be guilty of an offence.

(13) In this section “eligible person” means—

(a) a person who is established in the State, or

(b) a person who is established in an EEA state.

30 **11.—(1)** The Minister may revoke an employment agency licence where— Revocation of
employment agency
licence.

(a) the licensed employment agency concerned is convicted on indictment of an offence,

35 (b) the licensed employment agency concerned is convicted of an offence in a state other than the State, and the acts or omissions of which that offence consists would, if committed in the State, constitute an offence under the law of the State and be prosecutable—

(i) on indictment, or

40 (ii) summarily or, at the discretion of the Director of Public Prosecutions, on indictment,

(c) the licensed employment agency concerned fails or refuses to comply with any conditions attached to the licence, or

(d) the Minister is satisfied that the licensed employment agency concerned—

- (i) provided information to the Minister when applying for the licence that was false or misleading in a material respect,
- (ii) has contravened a provision of this Act or regulations made under this Act, whether or not he or she has been convicted of an offence. 5

(2) Where the Minister revokes an employment agency licence under this section he or she shall notify the licensed employment agency concerned in writing of the revocation forthwith.

(3) The revocation of an employment agency licence under this section shall take effect— 10

- (a) upon the expiration of the period specified in *section 15(3)*, or
- (b) where an appeal against the revocation is brought, upon the making of an order by the Circuit Court under *section 15(4)(c)* in relation to the appeal. 15

(4) Upon the taking effect of a revocation under this section, the employment agency to whom the revocation applies shall surrender the employment agency licence concerned to the Minister.

(5) An authorised officer may seize an employment agency licence that has been revoked under this section. 20

(6) Where a person employed by an employment agency whose licence stands revoked is, immediately before the revocation concerned, carrying out work or providing a service to a hirer undertaking pursuant to an agreement referred to in *section 3(1)(b)*, he or she may continue to carry out such work or provide such service to the hirer undertaking pursuant to that agreement for a period not exceeding 3 months from the date of the publication of the employment agency's name in the list referred to in *section 18*. 25

Designated state.

12.—The Minister may by order designate an EEA state for the purposes of this Act where he or she is satisfied that the provision of employment agency services in that state is— 30

- (a) not permitted under the law of that state except in accordance with a permit, licence or other similar instrument (howsoever described) granted by a person authorised, under that law, to grant such permit, licence or instrument, or 35
- (b) otherwise subject to regulation under such law of that state as in the opinion of the Minister is of similar effect to this Act. 40

Certain recognised employment agencies not permitted to carry on business in State.

13.—(1) Where a recognised employment agency—

- (a) is convicted on indictment of an offence,
- (b) is convicted of an offence in a state other than the State, and the acts or omissions of which that offence consists would, if committed in the State, constitute an offence under the law of the State and be prosecutable— 45

(i) on indictment, or

(ii) summarily or, at the discretion of the Director of Public Prosecutions, on indictment,

or

5 (c) contravenes a condition contained in a direction of the Circuit Court under *section 15(6)(b)*,

the Minister may, by notice in writing, inform the recognised employment agency that the recognised employment agency is prohibited from carrying on the business of an employment agency in the State or providing an employment agency service to a person in the State for such period, not exceeding 3 years, as may be specified in the notice.

15 (2) Where the Minister is satisfied that a recognised employment agency has contravened a provision of this Act or regulations made under this Act (whether or not the recognised employment agency has been convicted of an offence) the Minister may, by notice in writing, inform that recognised employment agency that the recognised employment agency is prohibited from carrying on the business of an employment agency in the State or providing an employment agency service to a person in the State for such period, not exceeding 20 3 years, as may be specified in the notice.

(3) A prohibition to which a notice under this section applies shall take effect—

25 (a) upon the expiration of the period specified in *section 15(5)*, or

(b) where an appeal against the revocation is brought, upon the making of an order by the Circuit Court under *section 15(6)(c)* in relation to the appeal.

(4) The Minister may withdraw a notice under this section.

30 (5) Where a person employed by an employment agency on whom a notice under this section is served is, immediately before the service of the notice, carrying out work or providing a service to a hirer undertaking pursuant to an agreement referred to in *section 3(1)(b)*, he or she may continue to carry out such work or provide 35 such service to the hirer undertaking pursuant to that agreement for a period not exceeding 3 months from the date of the publication of the employment agency's name in the list referred to in *section 18*.

40 **14.—(1)** The Minister shall, upon the commencement of this section, cause to be published on the internet a list of licensed employment agencies and recognised employment agencies.

List of licensed employment agencies and recognised employment agencies.

(2) The Minister shall, upon granting an employment agency licence under *section 10*, cause the following to be entered in the list published under *subsection (1)*:

(a) the name of the licensed employment agency concerned,

45 (b) subject to *paragraph (c)*, the address of his or her principal office or principal place of business in the State,

(c) in the case of an employment agency that—

- (i) is established in an EEA state, and
 - (ii) does not have a principal office or place of business in the State,
the address of his or her principal office in that EEA state, 5
 - (d) the period specified in the employment agency licence as being the period in respect of which the licence will remain in force,
 - (e) such other particulars as the Minister considers appropriate. 10
- (3) The Minister shall, upon receiving a request from a recognised employment agency to be entered on the list published under *subsection (1)*, cause the following to be entered in that list:
- (a) the name of the recognised employment agency concerned, 15
 - (b) subject to *paragraph (c)*, the address of his or her principal office or principal place of business in the State,
 - (c) in the case of a recognised employment agency that does not have a principal office or principal place of business in the State, the address of his or her principal office in the EEA state in which he or she is established, and 20
 - (d) such other particulars as the Minister considers appropriate.
- (4) Where an employment agency licence is revoked under *section 11*, the Minister shall, forthwith, remove from the list all of the information referred to in *subsection (2)* in respect of the employment agency concerned. 25
- (5) Where an employment agency licence expires, the Minister shall, forthwith, remove from the list all of the information referred to in *subsection (2)* in respect of the employment agency concerned, unless a new employment agency licence is granted in respect of the agency under *section 10*. 30
- (6) Where an employment agency ceases to be a recognised employment agency or is served with a notice under *section 13*, the Minister shall, forthwith, remove from the list all of the information referred to in *subsection (3)* in respect of the employment agency concerned. 35
- (7) In proceedings before a court, a true copy of the list published under *subsection (1)* or an extract from that list shall, unless the contrary is shown, be evidence of that list or extract. 40
- (8) For the purposes of this section, a copy of the list published under *subsection (1)* or an extract from that list is a true copy thereof if it purports to have been certified by an officer of the Minister as being a true copy.
- (9) This section shall not be construed as requiring a recognised employment agency to make a request to which *subsection (3)* applies as a condition of carrying on the business of an employment agency, or providing an employment agency service, in the State. 45

15.—(1) Where the Minister refuses an application for an employ- Appeal to Circuit
ment agency licence under *section 10*, the applicant may, not later Court.
than one month, or such longer period as the Circuit Court may
direct, after his or her receiving a notification under *subsection (9)(b)*
5 of that section, appeal to the Circuit Court against the refusal.

(2) The Circuit Court may, upon the hearing of an appeal under
subsection (1)—

- (a) direct the Minister to grant to the appellant an employ-
ment agency licence under *section 10*,
- 10 (b) direct the Minister to grant to the appellant an employ-
ment agency licence under that section, subject to such
conditions as the court may specify, or
- (c) affirm the decision of the Minister to refuse the appli-
cation concerned.

15 (3) Where the Minister revokes an employment agency licence
under *section 11*, the licensed employment agency concerned may,
not later than one month, or such longer period as the Circuit Court
may direct, after his or her receiving a notification under *subsection*
(2) of that section, appeal to the Circuit Court against the revocation.

20 (4) The Circuit Court may, upon the hearing of an appeal under
subsection (3)—

- (a) annul the decision of the Minister to revoke the employ-
ment agency licence under *section 11*,
- 25 (b) annul the decision of the Minister to revoke the employ-
ment agency licence under *section 11*, and attach con-
ditions to the licence, or
- (c) affirm the decision of the Minister to revoke the employ-
ment agency licence concerned.

30 (5) A recognised employment agency to which a prohibition in a
notice under *section 13* applies may, not later than one month, or
such longer period as the Circuit Court may direct, after service of
that notice, appeal to the Circuit Court against the prohibition.

(6) The Circuit Court may, upon the hearing of an appeal under
subsection (5)—

- 35 (a) annul the prohibition concerned,
- (b) annul the prohibition concerned, and direct that the recog-
nised employment agency comply with such conditions as
the court may specify, or
- (c) affirm the prohibition concerned.

40 (7) The Minister shall comply with a direction of the Circuit Court
under *subsection (2)*.

16.—(1) The Minister may, by direction in writing, require an employment agency to provide him or her with the following information and documentation before the expiration of such period as may be specified in the direction:

(a) information and documentation relating to the remuneration of each employee of the employment agency concerned in respect of any period during which the employee carried out work on behalf of, or provided a service to, a hirer undertaking pursuant to an agreement entered into by the employment agency and the hirer undertaking, and 5 10

(b) information and documentation relating to the hours of work of each employee of the employment agency concerned in respect of any period during which the employee carried out work on behalf of, or provided a service to, a hirer undertaking pursuant to an agreement entered into by the employment agency and the hirer undertaking. 15

(2) The Minister may, by direction in writing, require an employment agency to provide him or her with all such information and documentation (other than information and documentation to which *subsection (1)* applies) as he or she may reasonably require for the performance of his or her functions under this Act before the expiration of such period as may be specified in the direction. 20

(3) A person who contravenes a direction under this section shall be guilty of an offence. 25

(4) Where a licensed employment agency contravenes a direction under this section, the Minister may serve a notice on that employment agency informing him or her that the operation of the employment agency licence granted to him or her shall cease to have effect, and upon the service of the notice the operation of the employment agency licence shall, subject to *subsection (5)*, cease to have effect. 30

(5) An employment agency licence to which *subsection (4)* applies shall cease to have effect until—

(a) the Minister is satisfied that the employment agency to whom the notice under that subsection applies has complied with the direction concerned, or 35

(b) the notice under that subsection is withdrawn.

(6) Where a recognised employment agency contravenes a direction under this section, the Minister may serve a notice on that employment agency informing him or her that he or she is prohibited from carrying on the business of an employment agency in the State or providing an employment agency service to a person in the State, and upon the service of the notice the prohibition shall come into force. 40 45

(7) A prohibition under *subsection (6)* shall remain in force until—

(a) the Minister is satisfied that the recognised employment agency to whom it applies has complied with the direction concerned, or 50

(b) the notice under that subsection is withdrawn.

(8) The Minister may withdraw a notice under this section.

17.—(1) The Minister may make regulations requiring licensed employment agencies and recognised employment agencies to— Preparation and keeping of records.

5 (a) prepare such records as may be specified in the regulations, and

(b) keep any such records or any other records for such period as may be so specified.

10 (2) A person who contravenes a requirement in regulations under *subsection (1)* shall be guilty of an offence.

18.—(1) As soon as practicable after the commencement of this section the Minister shall publish on the internet a list of— List of prohibited employment agencies.

15 (a) employment agencies in respect of whom an employment agency licence stands revoked under *section 11* or does not have effect in accordance with *section 16*, and

(b) recognised employment agencies in respect of whom a prohibition specified in a notice under *section 13* or *16* is in force.

20 (2) If an employment agency whose name has been entered on the list prepared and maintained under this section is granted an employment agency licence, the Minister shall forthwith remove all information relating to that employment agency from that list.

25 (3) If a notice under *section 13* or *16* is withdrawn by the Minister, he or she shall forthwith remove all information relating to that employment agency from the list prepared and maintained under this section.

30 (4) If a particular entered in the list prepared and maintained under this section is incorrect or has ceased to be correct the Minister shall make such alterations to that list as he or she considers necessary.

19.—(1) Subject to *sections 11(6)* and *13(5)*, a person (other than a licensed employment agency or a recognised employment agency) who— Prohibition on provision of employment agency service.

(a) carries on the business of an employment agency, or

35 (b) provides an employment agency service to a person,

in the State shall be guilty of an offence.

40 (2) A person (other than a licensed employment agency or a recognised employment agency) who advertises, or causes to be advertised, the provision by him or her of an employment agency service shall be guilty of an offence.

(3) A person (other than a licensed employment agency) who holds himself or herself out as being a licensed employment agency, whether by advertisement or not, shall be guilty of an offence.

(4) A person (other than a recognised employment agency) who holds himself or herself out as being a recognised employment agency, whether by advertisement or not, shall be guilty of an offence. 5

(5) In this section—

“licensed employment agency” does not include a licensed employment agency, the operation of whose employment agency licence does not, for the time being, have effect in accordance with *section 16*; 10

“recognised employment agency” does not include a recognised employment agency in respect of whom a prohibition under *section 13* or *16* is in force. 15

Offence to enter into agreements with, or receive services from, certain persons.

20.—(1) A person who enters into an agreement with another person (other than a licensed employment agency or a recognised employment agency) for the provision by the second-mentioned person of an employment agency service shall be guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall be a defence for the accused to show that he or she did not know and could not, upon reasonable inquiry, have discovered that the person second-mentioned in that subsection was not a licensed employment agency or a recognised employment agency. 20

(3) Subject to *section 11(6)* and *13(5)*, where a person (other than a licensed employment agency or a recognised employment agency) provides an employment agency service to another person, the second-mentioned person shall be guilty of an offence. 25

(4) In proceedings for an offence under *subsection (3)*, it shall be a defence for the accused to show that he or she did not know and could not, upon reasonable inquiry, have discovered that the person first-mentioned in that subsection was not a licensed employment agency or a recognised employment agency. 30

(5) In this section—

“licensed employment agency” does not include a licensed employment agency, the operation of whose employment agency licence does not, for the time being, have effect in accordance with *section 16*; 35

“recognised employment agency” does not include a recognised employment agency in respect of whom a prohibition under *section 13* or *16* is in force. 40

Offence to charge fees to certain individuals.

21.—(1) A placement agency that charges an individual a fee in respect of—

(a) the effecting of the introduction of that individual to another person for the purposes of his or her employment by that or any other person, 45

(b) the doing of any act for the purposes of the individual's obtaining employment either in the State or in a place other than the State, or

(c) the provision of training to him or her for that purpose,

5 shall be guilty of an offence.

(2) A person who employs an individual who has been charged a fee by a placement agency in respect of—

10 (a) the effecting of the introduction of that individual to the person, or another person for the purposes of his or her employment by the person,

(b) the doing of any act for the purposes of the individual's obtaining employment either in the State or in a place other than the State, or

(c) the provision of training to him or her for that purpose,

15 shall be guilty of an offence.

20 (3) In proceedings for an offence under *subsection (2)*, it shall be a defence for a person to show that at the time of the commission of the act of which the alleged offence consists he or she did not know, and had no reasonable grounds for believing, that the placement agency concerned had charged the individual a fee in respect of the doing of any act referred to in *paragraph (a), (b) or (c)* of that subsection.

25 **22.—(1)** A licensed employment agency shall, upon request by an authorised officer, produce for inspection by the authorised officer the employment agency licence in respect of that employment agency. Production of employment agency licence upon request.

30 (2) A copy of an employment agency licence in respect of a licensed employment agency shall be displayed in a prominent position at each premises at which the licensed employment agency concerned carries on business in the State.

(3) A person who contravenes this section shall be guilty of an offence.

35 **23.—(1)** A person who forges an employment agency licence (in this section referred to as a “forged licence”) purporting to have been granted under *section 10*, or utters a forged licence knowing it to be a forged licence, shall be guilty of an offence. Forgery or alteration of employment agency licence.

40 (2) A person who alters an employment agency licence (in this section referred to as an “altered licence”) granted under *section 10* with intent to defraud or deceive, or utters an altered licence knowing it to be an altered licence, shall be guilty of an offence.

(3) A person who produces an employment agency licence that has been revoked under *section 11* to another person with intent to defraud or deceive shall be guilty of an offence.

45 (4) A person who, without lawful authority, has in his or her possession a forged licence or an altered licence shall be guilty of an offence.

Authorised officers.

24.—(1) The Minister may appoint such and so many of his or her officers as he or she considers appropriate to be an authorised officer or authorised officers for the purposes of this Act.

(2) The Minister may prescribe a body established by or under an Act of the Oireachtas for the purposes of this section. 5

(3) A body prescribed under *subsection (2)* may appoint such and so many of its members of staff, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of this Act.

(4) A person appointed to be an authorised officer under this section shall on his or her appointment be furnished— 10

(a) in the case of a person appointed under *subsection (1)*, by the Minister, and

(b) in the case of a person appointed under *subsection (3)*, by the body concerned,

with a warrant of his or her appointment, and when exercising a power conferred by this Act shall, if requested by any person thereby affected, produce such warrant to that person for inspection. 15

(5) An appointment under this section shall cease—

(a) in the case of a person appointed under *subsection (1)*, if—

(i) the Minister revokes the appointment, or 20

(ii) the person appointed ceases to be an officer of the Minister,

(b) in the case of a person appointed under *subsection (3)*, if—

(i) the body that made the appointment revokes the appointment, or 25

(ii) the person appointed ceases to be a member of staff of the body that appointed him or her,

or

(c) if the appointment is for a fixed period, on the expiry of that period. 30

Powers of authorised officers.

25.—(1) For the purposes of this Act, an authorised officer may—

(a) subject to *subsection (3)*, enter at all reasonable times any place of work or any premises at which he or she has reasonable grounds for believing that—

(i) the business of an employment agency is being carried on whether in accordance with an employment agency licence under *section 10* or not, 35

(ii) it is proposed to carry on the business of an employment agency whether in accordance with an employment agency licence under *section 10* or not, 40

(iii) any trade or business or any activity in connection with a trade or business is being or has been carried on, or

5 (iv) records or documents relating to any business, proposed business, trade or activity referred to in *subparagraph (i), (ii) or (iii)* are kept,

10 (b) at such place of work or premises inspect and take copies of, any books, records or other documents (including books, records or documents stored in non-legible form), or extracts therefrom, that he or she finds in the course of his or her inspection,

15 (c) remove any such books, documents or records from such place of work or premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(d) require—

(i) any person who carries on the business of an employment agency,

20 (ii) any applicant for an employment agency licence under *section 10*,

(iii) any person who carries on a trade, business or activity referred to in *paragraph (a)(iii)*, or

25 (iv) any person at the place of work or premises concerned, including the owner or person in charge of that place or premises,

to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of his or her functions under this Act,

(e) require—

30 (i) any person who carries on the business of an employment agency,

(ii) any applicant for an employment agency licence under *section 10*,

35 (iii) any person who carries on a trade, business or activity referred to in *paragraph (a)(iii)*, or

(iv) any person at the place of work or premises concerned, including the owner or person in charge of that place or premises,

40 to produce to the authorised officer such books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions under this Act,

45

(f) examine with regard to any matter under this Act, or a specified enactment, any person whom the authorised

officer has reasonable grounds for believing to be, or to have been, an employer or employee, or to be, or to have been, an employment agency or an applicant for an employment agency licence under *section 10*, and require the person to answer such questions as the authorised officer may ask relative to those matters and to make a declaration of the truth of the answers to those questions. 5

(2) When performing a function under this Act, an authorised officer may, subject to any warrant under *subsection (4)*, be accompanied by such number of other authorised officers or members of the Garda Síochána as he or she considers appropriate. 10

(3) An authorised officer shall not enter a dwelling, other than—

(a) with the consent of the occupier, or

(b) pursuant to a warrant under *subsection (4)*.

(4) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that information, books, documents or other records (including information, books, documents or records stored in non-legible form) required by an authorised officer under this section is or are held in any place or premises, issue a warrant authorising a named authorised officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, before the expiration of one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under *paragraphs (b), (c), (d), (e) and (f) of subsection (1)*. 15 20 25

(5) A person shall be guilty of an offence if he or she—

(a) obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *subsection (4)* or impedes the exercise by the officer or member, as the case may be, of such power, or 30

(b) fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect. 35 40

(6) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(7) A statement or admission made by a person pursuant to a requirement under *subsection (1)(d) or (f)* shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under *subsection (5)*). 45

(8) In this section “place of work” has the same meaning as it has in the Safety, Health and Welfare at Work Act 2005. 50

PART 3

MISCELLANEOUS PROVISIONS

26.—(1) Where an employment agency, upon which a summons is served in accordance with arrangements referred to in section 50(1) of the Act of 1994, fails, without reasonable excuse, to appear at any stage of proceedings for the offence to which that summons relates, the court before which the proceedings are for the time being taking place may do any thing or make any order that it would be entitled to do or make had the employment agency been present.

Prosecution in absentia.

(2) Where, by virtue of an employment agency's failure to appear in proceedings for an offence to which *subsection (1)* applies, the employment agency does not enter or sign a plea (whether before the District Court or the trial judge), the trial may proceed as though the employment agency had entered a plea of not guilty.

(3) In this section—

“Act of 1994” means the Criminal Justice Act 1994;

“employment agency” means an employment agency that is—

(a) a company within the meaning of section 382 of the Act of 1963,

(b) a body corporate that is not such a company, or

(c) an individual;

“summons” means a summons—

(a) in respect of an offence under a specified enactment, and

(b) to which paragraph (a) of section 50(1) of the Act of 1994 applies.

27.—(1) The Minister may, after consultation with the Advisory Committee, by order declare a code of practice prepared by him or her to be a code of practice for the purposes of this Act and the text of the code of practice shall be set out in a schedule to the order.

Codes of practice.

(2) The Minister shall, as soon as practicable after the making of an order under this section, arrange for a copy of the code of practice declared by the order to be a code of practice for the purposes of this Act to—

(a) be laid before each House of the Oireachtas,

(b) be given to the Advisory Committee,

(c) be published on the internet for inspection free of charge,

(d) be given to each licensed employment agency, and

(e) be given to each recognised employment agency entered on the list published under *section 14*.

(3) In this section “code of practice” means a code that provides practical guidance to employment agencies as to the steps that may

be taken for the purposes of complying with this Act or regulations under this Act.

Administrative cooperation with foreign statutory bodies.

28.—(1) The Minister may inform a foreign statutory body of—

- (a) the contravention by a person of a provision of this Act or a specified enactment, 5
- (b) the contravention by a person of a direction under *section 16*,
- (c) the refusal of an employment agency licence under *section 10*,
- (d) the revocation of an employment agency licence under *section 11*, 10
- (e) the service of a notice under *section 13*, or
- (f) the annulment by the Circuit Court of a decision of the Minister under *subsections (2)(a) or (b), (4)(a) or (b) or (6)(a) or (b) of section 15*. 15

(2) The Minister may, in so far as is consistent with the proper performance of his or her functions, enter into an arrangement or arrangements (whether any such arrangement is in the form of a memorandum of understanding or otherwise) with foreign statutory bodies for the purposes of facilitating administrative cooperation between the Minister and those foreign statutory bodies in the performance of their respective functions in so far as they relate to employment agencies. 20

(3) Without prejudice to the generality of *subsection (2)*, an arrangement entered into in accordance with this section may make provision in relation to— 25

- (a) the giving by a party to the arrangement of information (other than information to which *subsection (1)* applies) in his or her possession to the other party to the arrangement where the information is required by that other party for the purposes of the performance by him or her of any of his or her functions, 30
- (b) the giving of such other assistance to the party as will facilitate the performance by that other party of any of his or her functions, or 35
- (c) the carrying out of checks, inspections or investigations by the Minister on behalf of the foreign statutory body, or the foreign statutory body on behalf of the Minister, in relation to any employment agency or agencies.

(4) An arrangement under this section shall not operate to— 40

- (a) bind the Minister, or
- (b) require the Minister to provide information to a foreign statutory body if the disclosure of that information by the Minister is prohibited by law.

(5) The Minister shall not furnish any information to a foreign statutory body pursuant to an arrangement to which this section 45

5 applies unless he or she requires of, and obtains from, that body an undertaking in writing by the body that the body will comply with the terms specified in that requirement, being terms that correspond to the provisions of any enactment concerning the disclosure of that information by the Minister.

(6) The parties to an arrangement under this section may vary the terms of the arrangement.

10 (7) The Minister may give an undertaking to a foreign statutory body that he or she will comply with any terms specified in a requirement made of the Minister by the body to give such an undertaking where—

15 (a) those terms correspond to the provisions of any law in force in the state in which the body is established, being provisions which concern the disclosure by the body of the information referred to in *paragraph (b)*, and

(b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Minister pursuant to an arrangement to which this section applies.

20 (8) In this section “foreign statutory body” means a person, prescribed by regulations made by the Minister, in whom functions are vested under the law of a state (other than the State) in relation to employment agencies.

25 **29.**—Where a person communicates his or her opinion, whether in writing or otherwise, to a member of the Garda Síochána or the Minister that—

Protection from civil liability of persons who report breaches of Act.

(a) an offence under this Act has been or is being committed, or

30 (b) any provision of this Act has not been or is not being complied with,

then, unless the person acts in bad faith, he or she shall not be regarded as having committed any breach of duty towards any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

35 **30.**—(1) An employer shall not penalise or threaten penalisation against an employee for—

Prohibition on penalisation.

(a) making a complaint to a member of the Garda Síochána or the Minister that a provision of this Act is not being complied with,

40 (b) giving evidence in any proceedings under this Act, or

(c) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.

(2) *Schedule 2* shall have effect for the purposes of *subsection (1)*.

45 (3) If a penalisation of an employee, in contravention of *subsection (1)*, 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 *Schedule 2* and under those Acts.

(4) In this section “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— 5

(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007), or the threat of suspension, lay-off or dismissal, 10

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and 15

(e) coercion or intimidation.

False statements.

31.—A person who states to the Minister or a member of the Garda Síochána that—

(a) an offence under this Act has been or is being committed, or 20

(b) any provision of this Act has not been or is not being complied with,

knowing that statement to be false shall be guilty of an offence.

Construction of references to Act of 1971.

32.—References in any enactment to the Act of 1971 shall be construed as references to this Act. 25

Advisory Committee on Employment Agencies.

33.—(1) The Minister may establish a committee (to be known as the Advisory Committee on Employment Agencies, and in this Act referred to as the “Advisory Committee”) to assist and advise him or her in relation to the performance of any or all of his or her functions. 30

(2) The Advisory Committee shall consist of the following members that is to say—

(a) a chairperson, and

(b) 10 ordinary members.

(3) The chairperson of the Advisory Committee shall be appointed by the Minister from among persons who, in the opinion of the Minister— 35

(a) have experience of, and expertise in relation to, matters connected with the functions of the Advisory Committee, and 40

(b) are not connected with persons carrying on business as employment agencies.

(4) The ordinary members of the Advisory Committee shall be appointed by the Minister.

(5) Of the ordinary members of the Advisory Committee—

- 5 (a) 2 shall be persons who, in the opinion of the Minister, represent the interests of employment agencies,
- (b) 2 shall be persons who, in the opinion of the Minister, represent the interests of employers,
- (c) 2 shall be persons who, in the opinion of the Minister, represent the interests of employees,
- 10 (d) 2 shall be persons who, in the opinion of the Minister, have experience of, or expertise in matters connected with the functions of the Advisory Committee, and
- (e) 2 shall be appointed from among civil servants of the Government or bodies established by or under statute.

15 (6) There may be paid by the Minister to members of the Advisory Committee such allowances for expenses (if any) incurred by them as the Minister may, with the consent of the Minister for Finance, determine.

20 (7) A member of the Advisory Committee established under this section may be removed from office at any time by the Minister.

(8) The Minister may determine the terms of reference and regulate the procedure of the Advisory Committee established under this section.

25 (9) The Advisory Committee shall provide the Minister with such information as the Minister may from time to time require, in respect of its activities and operations, for the purposes of the performance of the functions of the Minister.

30 (10) The Minister may at any time dissolve the Advisory Committee established under this section and establish a new committee (also to be known as the Advisory Committee on Employment Agencies, and in this Act referred to as the “Advisory Committee”).

34.—(1) Where a member of the Advisory Committee established under *section 33* is—

Membership of either House of Oireachtas, European Parliament or local authority.

- (a) nominated as a member of Seanad Éireann,
- 35 (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, or
- 40 (d) becomes a member of a local authority,

he or she shall thereupon cease to be a member of the committee.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a member of a local authority shall, while he or she is so entitled or is such a member, be disqualified from being a member of the committee established under *section 33*. 5

SCHEDULE 1

Section 2.

SPECIFIED ENACTMENTS

1. Industrial Relations Acts 1946 to 2004.
2. Redundancy Payments Acts 1967 to 2007.
- 5 3. Minimum Notice and Terms of Employment Acts 1973 to 2005.
4. Protection of Employment Act 1977.
5. Unfair Dismissals Acts 1977 to 2007.
6. Protection of Employees (Employers' Insolvency) Acts 1984 to 2003.
- 10 7. Payment of Wages Act 1991.
8. Maternity Protection Acts 1994 and 2004.
9. Terms of Employment (Information) Acts 1994 and 2001.
10. Adoptive Leave Acts 1995 and 2005.
11. Protection of Young Persons (Employment) Act 1996.
- 15 12. Organisation of Working Time Act 1997.
13. Employment Equality Acts 1998 and 2004.
14. Parental Leave Acts 1998 and 2006.
15. National Minimum Wage Act 2000.
16. Protection of Employees (Part-Time Work) Act 2001.
- 20 17. Carer's Leave Act 2001.
18. Safety, Health and Welfare at Work Act 2005.
19. European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003).

SCHEDULE 2

REDRESS FOR CONTRAVENTION OF *section 30(1)**Complaints to rights commissioner.*

1. (1) An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened *section 30(1)* in relation to the employee and, upon the presentation of such a complaint, the commissioner shall— 5

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, and 10

(b) make a decision in relation to the complaint and communicate that decision in writing to the parties.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall— 15

(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 the complaint, and

(c) communicate the decision to the parties. 20

(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, 25

(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 2 years remuneration in respect of the employee's employment, 30

and the references in the foregoing clauses 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. 35

(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 12 months after such expiration) if he or she is 40

satisfied that the failure to present the complaint within that period was due to reasonable cause.

5 (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.

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

10 (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)*.

Appeal from decision of rights commissioner.

15 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
20 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 6 weeks (or such greater period as the Court may determine in the particular circumstances) from the date on
25 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 *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

30 (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:

35 (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;

40 (d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under *subparagraph (2)*; and

45 (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court, 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. 5

(7) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under this Part as it applies to matters referred to the Employment Appeals Tribunal under that section with— 10

(a) the substitution in that provision of references to the Labour Court for references to the Tribunal,

(b) the deletion in paragraph (d) of that provision of “registered”, and

(c) the substitution in paragraph (e) of that provision of “a fine not exceeding €5,000” for “a fine not exceeding twenty pounds”. 15

Paragraphs 1 and 2: supplemental provisions.

3. (1) 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. 20 25

(2) The bringing of a complaint before the Labour Court under *subparagraph (1)* 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. 30

(3) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (2)*. 35

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 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— 40

(a) the employee concerned,

(b) with the consent of the employee, any trade union of which the employee is a member, or 45

(c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

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.

5 (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
10 such an appeal is abandoned, be read as references 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
15 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 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.

20 (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, business or occupation.

Provisions relating to winding up and bankruptcy.

25 5. (1) There shall be included among the debts which, under section 285 of the Act of 1963 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation
30 payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)* by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided by rules
35 made under that Act.

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *para-*
40 *graph 1(2)(b)* or a determination under *paragraph 2(1)* by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be
45 required except in cases where it may otherwise be provided under that Act.

Amendment of Protection of Employees (Employers' Insolvency) Act 1984.

6. Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 is amended, in subsection (2)(a), by the substitution of the following subparagraph for subparagraph (xxvi):
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“(xxvi) any amount which an employer is required to pay by virtue of—

- (I) a decision of a rights commissioner under paragraph 1(2)(b) of Schedule 2 to the Act of 2006 or a determination by the Labour Court under paragraph 2(1) of that Schedule, or
- (II) a decision of a rights commissioner under *paragraph 1(2)(b) of Schedule 2 to the Employment Agency Regulation Act 2009* or a determination by the Labour Court under *paragraph 2(1) of that Schedule.*” 5



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

EXPLANATORY MEMORANDUM

Introduction

The main purpose of the Bill is to provide that employment agencies established in the State may operate only under a licence granted by the Minister. It also provides that employment agencies established in another EEA state must also apply for an employment agency licence unless the Minister is satisfied that agencies in that state are permitted to operate only in accordance with a licence or are otherwise appropriately regulated or authorised in that state. The Bill further provides that it is an offence for an employment agency to carry on its business in the State if it is not licensed under the Bill or is not a recognised employment agency.

The key features of the Bill are as follows:

- to establish an enhanced and strengthened regulatory framework for the operation of employment agency services by providing that employment agencies offering a service in the State, even if based abroad, will require to be licensed in Ireland, unless otherwise licensed or regulated in a Member State of the European Economic Area (EEA);
- to provide for the designation by the Minister of a Code of Practice setting out practices and standards to provide practical guidance to queries for the purposes of complying with the Act;
- to establish an Advisory Committee, representative of a range of interested stakeholders, which will prepare the Code of Practice for the Minister's consideration, and which will act as a forum to advise the Minister on the operation of the legislation and more generally of the employment agency sector;
- to provide for a capacity to revoke the licence of employment agencies and to prohibit recognised employment agencies from operating in Ireland for stated reasons;
- to make provision for prosecutions in absentia in certain circumstances for offences under employment rights legislation;
- to make it possible to enforce in the jurisdiction of other EEA states jurisdictions decisions of Rights Commissioners, the Labour Court and the Employment Appeals Tribunal in relation to employment agency workers;
- to provide for the protection of whistleblowers.

PART 1

PRELIMINARY AND GENERAL

Section 1 is a standard provision dealing with the short title and commencement of the Bill.

Section 2 sets out the main definitions associated with the Bill.

Section 3 defines the two types of employment agencies to which the Bill applies i.e. a “placement agency” and a “worker hire agency”, often referred to as a temporary employment agency.

Section 4 empowers the Minister to make regulations prescribing, inter alia, the form of an application for an employment agency licence, the form of an employment agency licence and the fee or fees in respect of an employment agency licence application.

Section 5 stipulates that any Orders and Regulations made by the Minister under the Bill, with the exception of an Order made under Section 1(2), must be laid before the Houses of the Oireachtas.

Section 6 is a standard provision stating that the expenses incurred by the Minister in connection with the administration of the Bill shall be paid out of moneys provided by the Oireachtas.

Section 7 sets out the procedures that apply in relation to the service of documents under the Bill.

Section 8 provides that a person guilty of an offence under the Bill shall be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or both and on conviction on indictment to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 5 years or both.

Section 9 provides for the repeal of the Employment Agency Act 1971 and for the revocation of all Regulations made under the Act.

PART 2

REGULATION OF EMPLOYMENT AGENCIES

Section 10 provides that to be eligible to apply for a licence a person must be established in the State or in another EEA state. Agencies from outside the EEA wishing to offer a service in the State must establish in Ireland or in another EEA state (the supply of personnel from outside the EEA will be subject to the Employment Permit requirements). The Section also provides that the Minister can refuse a licence in certain circumstances.

Section 11 sets out the circumstances in which the Minister may revoke an employment agency licence.

Section 12 provides for the Minister to designate an EEA state as one which satisfies requirements for the licensing, or otherwise regulation of, employment agencies in that EEA state.

Section 13 provides for the prohibition by the Minister of a recognised employment agency from carrying on the business of an employment agency in the State or providing an employment agency service to a person in the State in certain circumstances.

Section 14 provides for the publication by the Minister on the internet of a list of licensed employment agencies and recognised employment agencies.

Section 15 provides for an appeal to the Circuit Court by applicants for a licence, or a licensed employment agency or a recognised employment agency in circumstances where the Minister has refused to grant a licence under Section 10, revoked a licence under Section 11 or prohibited a recognised employment agency from carrying on the business of an employment agency in the State or providing an employment agency service to a person in the State under Section 13.

Section 16 provides that the Minister may direct an employment agency in writing to provide him or her by a given date information and documentation in relation to the remuneration and hours of work of any of its employees in respect of any period of work of those employees with a hirer undertaking.

In addition the Section provides that where a licensed or recognised employment agency contravenes a direction under this Section the Minister may serve a notice on the licensed employment agency informing it that its licence shall cease to have effect (which shall cease to have effect on service of the notice) and serve a notice on the recognised employment agency informing it that it is prohibited from carrying on business in the State or providing an employment agency service to a person in the State.

Finally the Section provides that a person shall be guilty of an offence if he or she contravenes a direction under this Section.

Section 17 provides that the Minister may make Regulations requiring licensed and recognised employment agencies to prepare such records as may be specified in the Regulations and to keep those records for such period of time specified in the Regulations. The Section also provides that a person who contravenes the above requirements shall be guilty of an offence.

Section 18 provides that the Minister shall publish on the internet a list of employment agencies which have had their licences revoked under Section 11 or which do not have effect in accordance with Section 16 and of recognised employment agencies in respect of whom a prohibition notice under Sections 13 or 16 is in force.

Section 19 provides that a person, other than a licensed employment agency or a recognised employment agency shall be guilty of an offence if he or she carries on the business of an employment agency in the State or provides an employment agency service to a person in the State or advertises or causes to be advertised the provision by him or her of an employment agency service. This Section also provides that a person, other than a licensed employment agency or recognised employment agency who holds himself or herself out as being a licensed employment agency or recognised employment agency, whether by advertisement or not, shall be guilty of an offence.

Section 20 provides that it is an offence for a person to enter into an agreement with an employment agency for the provision of an employment agency service by that employment agency if it is not licensed or is not a recognised employment agency. Similarly it is an offence for a person if an unlicensed employment agency or an employment agency which is not a recognised employment agency provides an employment agency service to that person.

The Section also provides that in proceedings for an offence under this Section that it shall be a defence for the accused to show that he or she did not know and could not, upon reasonable inquiry, have discovered that he or she was not dealing with a licensed employment agency or a recognised employment agency.

Section 21 provides that a placement agency shall be guilty of an offence if it charges a job seeker a fee for providing its services to the job seeker including training. The Section also provides that it shall be an offence for a person to employ a job seeker who has been charged a fee by a placement agency.

In addition it is provided for that in proceedings for an offence under this Section, it shall be a defence for a person to show that he or she did not know and had no reasonable grounds for believing that the placement agency had charged the job seeker employed by that person a fee for providing the job seeker with its services including training.

Section 22 provides that a licensed employment agency must produce its licence for inspection by an authorised officer on request, must display a copy of the licence prominently in its premises and that a person who contravenes this Section shall be guilty of an offence.

Section 23 provides that a person who forges an employment agency licence, displays a forged licence knowing it to be forged, alters a licence with intent to defraud or deceive, displays an altered licence knowing it to be altered, produces a revoked licence to another person with intent to defraud or deceive or who has in his or her possession a forged or altered licence, without lawful authority, shall be guilty of an offence.

Section 24 provides for the appointment of authorised officers by the Minister for the purposes of the Bill.

Section 25 sets out the powers of authorised officers, including the power to require certain records from persons who control workplaces.

PART 3

MISCELLANEOUS PROVISIONS

Section 26 provides for the prosecution in absentia under Section 50(1) of the Criminal Justice Act 1994 of employment agencies from outside the State who have committed an offence in relation to one of their employees in the State under a specified enactment set out in Schedule 1 to the Bill i.e. industrial relations or employment rights legislation.

Section 27 provides for the making by the Minister by Order under the Bill of a code of practice relating to the conduct of employment agencies after consultation with the Advisory Committee to be set up under Section 33 of the Bill.

Section 28 provides for administrative cooperation with foreign statutory bodies in relation to issues which arise under the Bill.

Section 29 provides for the protection from civil liability of persons who report breaches of the Bill to the Minister or a member of the Garda Síochána.

Section 30 provides that an employer shall not penalise or threaten penalisation against an employee for making a complaint to a member of the Garda Síochána about a breach of a provision of the Bill or giving evidence in any proceedings under the Bill. The Section also sets out what constitutes penalisation.

Section 31 provides that if a person states to the Minister or a member of the Garda Síochána that an offence under the Bill has been or is being committed or that a provision of the Bill is not being complied with, knowing the statement to be false, shall be guilty of an offence.

Section 32 provides that references to the Employment Agency Act 1971 in any enactment shall be construed as references to this Bill.

Section 33 provides for the establishment of an Advisory Committee on Employment Agencies by the Minister to advise and assist her in relation to the performance of her functions under the Bill and for the appointment of members of the Committee by the Minister.

Section 34 provides, inter alia, that on assuming membership of either House of the Oireachtas, European parliament or local authority such person shall cease to be a member of the Advisory Committee.

Schedule 1 contains a list of specified enactments i.e. the body of Industrial Relations and Employment Rights legislation that applies, inter alia, to employment agency employees.

Schedule 2 sets out the redress mechanisms available to, inter alia, employment agency employees in the event that their employers are in breach of Section 30(1) of the Bill.

Financial Implications

The proposals in the Bill represent a considerable upgrading of the regulatory framework currently in place under the Employment Agency Act 1971. Increased administrative costs will depend on the number of additional employment agency licences to be issued under the new proposals in the Bill which may carry significant attendant language interpretation costs in respect of the licensing of those employment agencies outside the State.

The power to enforce elsewhere in the EEA, Irish decisions regarding breaches of employment rights may also give rise to some additional costs.

Regulations to set the relevant fee in respect of application for an employment agency licence will be made by the Minister for Enterprise, Trade and Employment.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Iúil, 2009.*