



AN BILLE UM ÁISEANNA SAOTHAIR (LEASÚ) 2009
LABOUR SERVICES (AMENDMENT) BILL 2009

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 1 of Principal Act.
 3. Amendment of section 6 of Principal Act.
 4. Accountability of Director General of An Foras Áiseanna Saothair to Committee of Public Accounts.
 5. Accountability of Director General of An Foras Áiseanna Saothair to other committees of Houses of Oireachtas.
 6. Disclosure of interests.
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 8. Amendment of section 13 of Principal Act.
 9. Amendment of Part I of Schedule to Principal Act.
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 11. Redress for penalisation contrary to section 13B of Principal Act.
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ACTS REFERRED TO

Companies Act 1990	1990, No. 33
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Courts Act 1981	1981, No. 11
Ethics in Public Office Act 1995	1995, No. 22
Labour Services Act 1987	1987, No. 15
Labour Services Acts 1987 and 1999	
Redundancy Payments Act 1967	1967, No. 21
Unfair Dismissals Acts 1977 to 2007	



AN BILLE UM ÁISEANNA SAOTHAIR (LEASÚ) 2009
LABOUR SERVICES (AMENDMENT) BILL 2009

BILL

entitled

5 AN ACT TO AMEND THE LABOUR SERVICES ACT 1987;
AND TO PROVIDE FOR MATTERS CONNECTED
THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Labour Services Act Definition.
10 1987.

2.—Section 1 of the Principal Act is amended by the insertion, in Amendment of
subsection (1), of the following definitions: section 1 of
Principal Act.

“ ‘material interest’ shall be construed in accordance with
section 2(3) of the Ethics in Public Office Act 1995;

15 ‘serious wrongdoing’ includes breach of duty by a member or
member of staff of An Foras, or a consultant, adviser or other
person, in relation to An Foras.”.

3.—Section 6 of the Principal Act is amended by the insertion of Amendment of
the following subsections: section 6 of
Principal Act.

20 “(6) The Director General shall hold office for such period,
not exceeding 5 years from the date of his appointment, as the
Minister shall determine.

(7) Subject to subsection (8), where the Director General’s
25 term of office expires by the effluxion of time he shall be eligible
to be reappointed to that office.

(8) Where the Director General has served 2 terms of office
(including a term of office commenced or completed before the
commencement of section 3 of the *Labour Services*
(Amendment) Act 2009) he shall not be eligible to be
30 reappointed to that office.

(9) The Director General shall, *ex officio*, be a member of
An Foras.”.

4.—The Principal Act is amended by the insertion of the following section:

“6A.—(1) The Director General shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (hereafter in this section referred to as the ‘Committee’), give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that An Foras is required by this Act to prepare,
- (b) the economy and efficiency of An Foras in the use of its resources,
- (c) the systems, procedures and practices employed by An Foras for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting An Foras referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.

(2) In the performance of his duties under this section, the Director General shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.”.

5.—The Principal Act is amended by the insertion of the following section:

“6B.—(1) In this section ‘Committee’ means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in section 6A (inserted by *section 4* of the *Labour Services (Amendment) Act 2009*) or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to subsection (3), the Director General shall, at the request in writing of a Committee, attend before it to give an account in respect of matters relating to the general administration of An Foras that fall within the terms of reference of the Committee.

(3) The Director General shall not be required to give an account before a Committee in respect of any matter that has been, or is or is likely to be, the subject of proceedings before a court or tribunal in the State.

(4) Where the Director General is of the opinion that a matter in respect of which he is requested to give an account

before a Committee is a matter to which subsection (3) applies, he shall, as soon as may be after the making of the request, inform the Committee in writing of that opinion and the reasons for the opinion, unless the information is conveyed to the Committee at a time when the Director General is before it.

(5) Where the Director General has informed a Committee of his opinion in accordance with subsection (4) and the Committee wish to proceed with the request concerned, the Chairperson of the Committee may, on behalf of the Committee, apply to the High Court in a summary manner for a determination of the question whether the matter is one to which subsection (3) applies, and the High Court shall determine the matter.

(6) Where the Director General informs a Committee, in accordance with subsection (4), that he is of the opinion that a matter in respect of which he is requested to give an account before the Committee is a matter to which subsection (3) applies, then, subject to subsection (7), he shall not attend before the Committee to give an account in respect of the matter.

(7) If, upon an application under subsection (5), the High Court determines that the matter concerned is one to which subsection (3) applies, the Committee shall withdraw the request referred to in subsection (2), but if the High Court determines that subsection (3) does not apply, the Director General shall attend before the Committee to give an account in respect of the matter.”.

6.—The Principal Act is amended by the insertion of the following new sections: Disclosure of interests.

“Disclosure by members of An Foras of certain interests. 9A.—(1) Where at a meeting of An Foras any of the following matters arises, namely—

(a) an arrangement to which An Foras is a party or a proposed such arrangement, or

(b) a contract or other agreement with An Foras or a proposed such contract or other agreement,

then, any member of An Foras present at the meeting who otherwise than in his capacity as such a member has a material interest in the matter shall—

(i) at the meeting, disclose to An Foras the fact of such interest and the nature thereof,

(ii) absent himself from the meeting or that part of the meeting during which the matter is being discussed,

(iii) take no part in any deliberation of An Foras relating to the matter, and

(iv) not vote on a decision relating to the matter.

(2) A member of An Foras who, otherwise than in his capacity as such a member has a material interest in— 5

(a) an arrangement or proposed arrangement to which paragraph (a) of subsection (1) applies, or

(b) a contract or other agreement or a proposed contract or other agreement to which paragraph (b) of that subsection applies, 10

shall neither influence nor seek to influence any decision to be made by An Foras in relation thereto. 15

(3) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting. 20

(4) Where at a meeting of An Foras a question arises as to whether or not a course of conduct, if pursued by a member of An Foras, would constitute a failure by him to comply with the requirements of subsection (1), the question may, subject to subsection (5), be determined by the chairman of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting. 25 30

(5) Where at a meeting of An Foras, the chairman of the meeting is the member in respect of which a question to which subsection (4) applies falls to be determined, then the other members of An Foras attending the meeting shall choose one of their number to be chairman of the meeting for the purpose of determining the question concerned. 35 40

Disclosure by directors of subsidiary of certain interests.

9B.—(1) Where at a meeting of the board of the subsidiary any of the following matters arises, namely—

(a) an arrangement to which the subsidiary is a party or a proposed such arrangement, or 45

(b) a contract or other agreement with the subsidiary or a proposed such contract or other agreement,

then, any director of the subsidiary present at the meeting who otherwise than in his capacity as such 50

a director has a material interest in the matter shall—

(i) at the meeting, disclose to the board of the subsidiary the fact of such interest and the nature thereof,

(ii) absent himself from the meeting or that part of the meeting during which the matter is being discussed,

(iii) take no part in any deliberation of the board of the subsidiary relating to the matter, and

(iv) not vote on a decision relating to the matter.

(2) A director of the subsidiary who, otherwise than in his capacity as such a director has a material interest in—

(a) an arrangement or proposed arrangement to which paragraph (a) of subsection (1) applies, or

(b) a contract or other agreement or a proposed contract or other agreement to which paragraph (b) of that subsection applies,

shall neither influence nor seek to influence any decision to be made by the board of the subsidiary in relation thereto.

(3) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) Where at a meeting of the board of the subsidiary a question arises as to whether or not a course of conduct, if pursued by a director of the subsidiary, would constitute a failure by him to comply with the requirements of subsection (1), the question may, subject to subsection (5), be determined by the chairman of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(5) Where at a meeting of the board of the subsidiary, the chairman of the meeting is the director in respect of which a question to which subsection (4) applies falls to be determined, then the other directors of the subsidiary attending the meeting shall choose one of their number to be chairman of the meeting for the purpose of determining the question concerned.

(6) Where An Foras is satisfied that a director of the subsidiary has contravened subsection (1) or (2), An Foras may, if it thinks fit, remove that director from office and, where a person is removed from office pursuant to this subsection, he shall thenceforth be disqualified for being a director of the subsidiary. 5

Disclosure by members of staff of An Foras of certain interests.

9C.—(1) Where a member of the staff of An Foras has a material interest, otherwise than in his capacity as such a member, in any contract, agreement or arrangement, to which An Foras is a party, or a proposed such contract, agreement or arrangement, that person shall— 10

(a) disclose to An Foras his interest and the nature thereof, 15

(b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by An Foras or members of the staff of An Foras in relation thereto, and 20

(c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement. 25

(2) Subsection (1) shall not apply to contracts or proposed contracts of employment of members of the staff of An Foras with An Foras.

(3) Where a person contravenes this section An Foras may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment. 30

Disclosure by members of staff of subsidiary of certain interests.

9D.—(1) Where a member of the staff of the subsidiary has a material interest, otherwise than in his capacity as such a member, in any contract, agreement or arrangement, to which the subsidiary is a party, or a proposed such contract, agreement or arrangement, that person shall— 35

(a) disclose to the subsidiary his interest and the nature thereof, 40

(b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the subsidiary or members of the staff of the subsidiary in relation thereto, and 45

(c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement. 50

(2) Subsection (1) shall not apply to contracts or proposed contracts of employment of members of the staff of the subsidiary with the subsidiary.

(3) Where a person contravenes this section the subsidiary may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment."

7.—The Principal Act is amended by the insertion of the following sections:

Protection of persons reporting certain matters.

"Protection from civil liability of persons who report certain misconduct.

13A.—(1) Where a person communicates his opinion, whether in writing or otherwise, to a member of the Garda Síochána or a member of An Foras that—

- (a) an offence under this Act or any other enactment has been or is being committed,
- (b) any provision of this Act or any other enactment or rule of law has been or is being contravened, or
- (c) there has been other serious wrongdoing in relation to An Foras,

then, unless the person acts in bad faith, he 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.

(2) Where a person communicates his opinion, whether in writing or otherwise, to the Minister that a direction given by the Minister under this Act has been or is being contravened then, unless the person acts in bad faith, he 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.

Prohibition on penalisation.

13B.—(1) An employer shall not penalise or threaten penalisation against an employee for—

- (a) making a complaint to a member of the Garda Síochána or a member of An Foras that a provision of this Act, or any enactment or other rule of law, has been or is being contravened,
- (b) making a complaint to the Minister that a direction given by him under this Act has been or is being contravened,
- (c) making a complaint to a member of An Foras that there has been serious wrongdoing in relation to An Foras,

- (d) giving evidence in any proceedings under this Act or any other enactment, or
- (e) giving notice of his intention to do any of the things referred to in the preceding paragraphs. 5

(2) Schedule 2 (inserted by *section 11* of the *Labour Services (Amendment) Act 2009*) shall have effect for the purposes of subsection (1).

(3) If the 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. 15

(4) In this section—

‘employee’ means—

- (a) in relation to An Foras, a member of the staff of An Foras, or
- (b) in relation to the subsidiary, a member of the staff of the subsidiary; 20

‘employer’ means An Foras or the subsidiary;

‘penalisation’ means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his detriment with respect to any term or condition of his employment, and, without prejudice to the generality of the foregoing, includes— 25

- (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, 30
- (b) demotion or loss of opportunity for promotion, 35
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition or administration of any discipline, reprimand or other penalty (including a financial penalty), and 40
- (e) coercion or intimidation.

False statements.

13C.—A person who states to a member of the Garda Síochána or a member of An Foras that—

- (a) an offence under this Act or any other enactment has been or is being committed, 45

(b) a provision of this Act, a provision of any other enactment or any rule of law has been or is being contravened, or

(c) there has been serious wrongdoing by any person in relation to An Foras,

knowing the statement to be false shall be guilty of an offence.”.

8.—Section 13 of the Principal Act is amended by the substitution of the following subsection for subsection (3):

Amendment of section 13 of Principal Act.

“(3) Nothing in subsection (1) shall prevent the disclosure of information—

(a) in a report made to An Foras or by or on behalf of An Foras to the Minister, or

(b) by a member of An Foras to the Minister.”.

9.—Part I of the Schedule to the Principal Act is amended by—

Amendment of Part I of Schedule to Principal Act.

(a) the substitution of the following paragraph for paragraph 2:

“2.—(1) An Foras shall consist of the following members, that is to say—

(a) a chairman, and

(b) 10 ordinary members (including the Director General).

(2) The members of An Foras shall be appointed by the Minister, after consultation with the Minister for Education and Science and the Minister for Social and Family Affairs, from among persons who, in the opinion of the Minister, have experience of, and expertise in matters connected with—

(a) the functions of An Foras, or

(b) finance, trade, commerce, corporate governance or public administration.

(3) Subject to subparagraph (5), the chairman of An Foras shall hold office for such period not exceeding 5 years from the date of his appointment, as the Minister shall determine.

(4) Subject to subparagraph (5), an ordinary member of An Foras shall hold office for such period not exceeding 5 years from the date of his appointment, as the Minister shall determine.

(5) Of the members of An Foras (other than the Director General) first appointed after the commencement of section 9(a) of the *Labour Services (Amendment) Act 2009*—

- (a) such 3 members as the Minister shall determine shall hold office for 3 years from the date of their appointment,
- (b) such 3 members as the Minister shall determine shall hold office for 4 years from the date of their appointment, and 5
- (c) such 3 members as the Minister shall determine shall hold office for 5 years from the date of their appointment.

(6) Subject to subparagraph (7), a member of An Foras (other than the Director General) whose term of office expires by the effluxion of time shall be eligible for reappointment to An Foras. 10

(7) A member of An Foras (other than the Director General) who has served 2 terms of office shall not be eligible for reappointment to An Foras, and any period during which a person serves as a member of An Foras pursuant to an appointment under paragraph 7 (inserted by *section 9(b)* of the *Labour Services (Amendment) Act 2009*) shall be deemed for the purposes of this subparagraph to be a term of office. 15 20

(8) The members of An Foras in office immediately before the commencement of *section 9(a)* of the *Labour Services (Amendment) Act 2009* shall continue in office for the period beginning on the date of such commencement and ending on the date of the first appointment of members of An Foras under this paragraph after such commencement, and An Foras as constituted immediately before such commencement shall during that period be deemed to be validly constituted for all purposes.”, 25 30

(b) the substitution of the following paragraph for paragraph 7:

“7.—(1) If a member of An Foras (other than the Director General) dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of An Foras to fill the casual vacancy so occasioned. 35

(2) A person appointed to be a member of An Foras pursuant to this paragraph shall hold office for—

- (a) that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his appointment, or 40
- (b) such other period, not exceeding 5 years, as the Minister may determine, 45

and shall, subject to subparagraph (7) of paragraph 2 (inserted by *section 9(a)* of the *Labour Services (Amendment) Act 2009*), be eligible for reappointment as a member of An Foras on the expiry of the said period.”,

(c) the substitution of the following paragraph for paragraph 12: 50

“12.—(1) The Minister may at any time remove from office a member of An Foras and, in particular, may remove such member from office if the Minister is satisfied that—

- (a) the member is not adequately performing his functions, whether by reason of incapacity through illness or injury or for any other reason,
- (b) a material conflict of interest exists in relation to the performance by the member of his functions,
- (c) the removal of the member is necessary or expedient for the effective performance by An Foras of its functions, or
- (d) the member has contravened section 9A (inserted by *section 6 of the Labour Services (Amendment) Act 2009*).

(2) Where a person is removed from office pursuant to subparagraph (1), he shall thenceforth be disqualified for membership of An Foras.

(3) A member of An Foras may resign from office by notice in writing given to the Minister and the resignation shall take effect on the day on which the Minister receives the notice.

(4) A member of An Foras shall cease to be qualified for office and shall cease to hold office if he—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,
- (e) is the subject of an order under section 160 of the Companies Act 1990,
- (f) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- (g) ceases to be ordinarily resident in the State.

(5) A member of An Foras shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Finance.”,

(d) the substitution of “7” for “9” in paragraph 16.

10.—Part II of the Schedule to the Principal Act is repealed.

11.—The Principal Act is amended by the insertion of the following Schedule:

“SCHEDULE 2

Section 13B.

REDRESS FOR CONTRAVENTION OF SECTION 13B(1) 5

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 subsection (1) of section 10 13B (inserted by *section 7 of the Labour Services (Amendment) Act 2009*) in relation to the employee.

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

(a) give the parties an opportunity to be heard by the 15 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 25 action,

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the 30 employee’s employment.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates. 35

(5) Notwithstanding subparagraph (4), a rights commissioner may entertain a complaint under this paragraph presented to him after the expiration of the period referred to in subparagraph (4) (but not later than 12 months after such expiration) if he is satisfied that the failure to present the complaint within 40 that period was due to reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister. 45

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

(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.

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—

(a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

(c) communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned, giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under subparagraph (4) and stating the intention of the party concerned to appeal against the decision.

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

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

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;

(b) the times and places of hearings of such appeals;

(c) the representation of the parties to such appeals;

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

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

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

(5) The 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, or

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

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 such an appeal is abandoned, be construed as references to the date of such abandonment.

10 (3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or 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.

(4) An application under this paragraph shall be made to the Circuit Court sitting in the Dublin Circuit.”.

20 **12.**—The Schedule to the Principal Act shall, upon the commencement of section 11, become Schedule 1 to the Principal Act, and references in any enactment to that Schedule shall be construed accordingly. Construction of references to Schedule to Principal Act.

25 **13.**—(1) This Act may be cited as the Labour Services (Amendment) Act 2009. Short title, collective citation, construction and commencement.

(2) The Labour Services Acts 1987 and 1999 and this Act may be cited together as the Labour Services Acts 1987 to 2009 and shall be construed together as one Act.

30 (3) This Act shall come into operation on such day or days as the 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.



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AN BILLE UM ÁISEANNA SAOTHAIR (LEASÚ) 2009
LABOUR SERVICES (AMENDMENT) BILL 2009

EXPLANATORY MEMORANDUM

Introduction

The main purpose of this Bill is to effect a number of amendments to the Labour Services Act, 1987 in order to improve the effectiveness and governance of the board of FÁS and strengthen the accountability of the Director General of FÁS to the Oireachtas.

It is proposed to make the following amendments:

- Reduce the size of the board from 17 members to 11 members;
- Change the composition of the board by providing that the Minister for Enterprise, Trade and Employment may select the members of the board, in consultation with the Minister for Social and Family Affairs and the Minister for Education and Science in a non-prescribed manner based on a person's particular talents and experience;
- Include the Director General as an ex-officio member of the board;
- Introduce a rolling system of appointments to the board;
- Implement the recommendations of the Committee of Public Accounts relating to the accountability of the Director General of FÁS and the fiduciary duties of directors appointed by the Minister;
- Introduce provisions relating to the disclosure of interests by board members and the staff of FÁS.

Provisions of Bill

Section 1 provides for the definitions associated with the Bill.

Section 2 provides for the insertion of the definition of “material interest” which will be construed in accordance with section 2(3) of the Ethics in Public Office Act 1995 and a definition of “serious wrongdoing”.

Section 3 provides that the Director General of FÁS shall be eligible to serve not more than two terms in office of up to five years each. This includes a term of office commenced or completed before the commencement of this Bill. This section also provides that the Director General shall, “ex officio” be a member of the board of FÁS.

Section 4 provides for the accountability of the Director General of FÁS to the Committee of Public Accounts. This section provides for the Director General to give evidence to the Committee on the regularity and propriety of the transactions recorded in any accounts subject to audit, the economy and efficiency of FÁS in the uses of its resources, the systems and procedures employed by FÁS for the purpose of evaluating the effectiveness of its operations and any matters affecting FÁS in a special report of the Comptroller and Auditor General.

Section 5 provides for the accountability of the Director General of FÁS to other committees of the Oireachtas. This section provides for the Director General to attend any Committee appointed by either or both Houses of Oireachtas and give an account of the general administration of FÁS.

Section 6 provides for a number of requirements in relation to disclosure and conflicts of interests in respect of the members of the board and staff of FÁS. This section places an obligation to disclose a material interest in any decision being made by FÁS and also to refrain from influencing the decision making process where such a material interest exists. This section also sets out the consequences for breaches of this section by FÁS staff, which includes dismissal.

Section 7 section provides protection from civil liability for employees of FÁS who bona fide report offences being committed under any enactment or any wrongdoing in relation to FÁS to the Garda Síochána or to a member of the board. This section also makes it an offence for anyone to report in bad faith to any of those persons. In respect of directions given by the Minister, an employee will have the same protection if he/she reports a contravention of these directions to the Minister.

Section 8 is an amendment to Section 13 of the Labour Services Act 1987 to provide for the removal of the prohibition on the disclosure of information obtained by a member of the board in the course of his/her duties in certain circumstances. The current legislation prohibits the disclosure of information with limited exceptions. This amendment will permit the disclosure of information specifically to the Minister for Enterprise, Trade and Employment and will remove any doubt about there being a legal barrier to a member of the board reporting issues of concern to the Minister.

Section 9 provides for restructuring the board of FÁS in a number of ways. The board is considered large in comparison to many non-commercial semi-State boards and in order to streamline the board it is proposed to reduce its size from 17 (16 ordinary members plus a chairman) to 11 (10 ordinary members including the Director General as an ex-officio member plus a chairman).

The Bill will provide for a departure from the current model of 17 members where nominations can be made by other bodies (trade unions and employers nominate 4 members each, and employees of FÁS elect 2 staff members to the board) to a model of 11 members where the Minister for Enterprise, Trade and Employment, in consultation with the Minister for Social and Family Affairs and the

Minister for Education and Science, will select the Chair and 9 ordinary members based on their ability and experience, the other member being the Director General. Membership of the board will be limited to 2 terms of not more than five years each. In addition, in order to facilitate the development of fresh ideas and experience this section also provides for a rolling system of appointments to the board.

This section also includes a provision to amend paragraph 12 of the First Schedule of the Labour Service Act, 1987. The purpose of this amendment is to update and strengthen the regulation around the dismissal of a member of the board and is in keeping with current legislation in this area. The amendment provides that the Minister may remove a member of the board for the following reasons:

- The member is not adequately performing his functions;
- A material conflict of interest exists in relation to the performance by the member of his functions;
- The removal of a member is necessary or expedient for the effective performance by FÁS of its functions;
- A member of the board has contravened the provisions in relation to disclosure of interest as provided for in section 6 of the Bill.

Section 10 provides for the repeal of Part II of the Schedule to Labour Services Act, 1987, as employees of FÁS will no longer be appointed to the board following election as described therein.

Section 11 provides for redress for penalisation contrary to the provisions contained in Section 7 of this Bill. This section provides comprehensive protection for employees against penalisation such as suspension, dismissal, demotion, coercion or intimidation by their employers for bona fide reporting of matters under this section. An employee may make a complaint to a Rights Commissioner if they consider that are being penalised by their employer for reporting breaches of legislation or serious wrongdoing in relation to FÁS. The right of appeal to the Labour Court by the employer or employee of any decision of the Rights Commissioner in the context of this provision is also contained in this section.

Section 12 provides for the Schedule to the Labour Services Act, 1987 to become Schedule 1.

Section 13 refers to the short title, citation and commencement.

Financial Implications of the Bill

The Bill has no direct financial implications for the Exchequer.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Deireadh Fómhair, 2009.*