



DÁIL ÉIREANN

**AN BILL IOMAÍOCHTA (LEASÚ) 2010
COMPETITION (AMENDMENT) BILL 2010**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

DÁIL ÉIREANN

AN BILL IOMAÍOHTA (LEASÚ) 2010
—ROGHCHOISTE

COMPETITION (AMENDMENT) BILL 2010
—SELECT COMMITTEE

*Leasuithe
Amendments*

SECTION 1

1. In page 3, before section 1, to insert the following new section:

“1.—In this Act, “public body” has the meaning assigned by section 2 of the Freedom of Information Act 1997.”.

—Willie Penrose.

2. In page 3, before section 1, to insert the following new section:

“1.—(1) Where an individual engages for gain under a contract with an undertaking personally to do any work or provide any services (whether work or services of a manual, clerical, professional or vocational nature or otherwise and whether for the undertaking that is party to the contract or for other persons)—

(a) a trade union of which that individual and other individuals so engaged are members is deemed not to be an association of undertakings for the purposes of section 4 of the Competition Act 2002, and

(b) the said section 4 does not apply to any agreement, decision or concerted practice affecting the terms or conditions under which such work is done or services are provided by two or more such individuals under similar contracts—

(i) with the same undertaking, or

(ii) with two or more different undertakings, that are members of an organisation that is (or is part of an organisation that is) a social partner for the purposes of the National Economic and Social Development Office Act 2006.

(2) Nothing in *subsection (1)* prevents the application of the said section 4 to agreements, decisions or concerted practices affecting the terms or conditions under which work is done for or services are provided to persons contracting outside the course of their business.

(3) In *subsection (1)*—

(a) “trade union” means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act 1941,

(b) “undertaking” includes any public body.”.

—Willie Penrose.

[SECTION I]

3. In page 3, before section 1, to insert the following new section:

“1.—(1) This section applies to a scheme, whether under an enactment or otherwise, for payments out of public funds by a public body to members of a profession in consideration for the provision of services to members of the public or to a class of members of the public.

(2) Where the Government makes a declaration under this subsection that there is, in relation to a scheme to which this section applies, a public interest in negotiating a collective agreement between the public body concerned and an organisation that is representative of the profession concerned, providing for the terms and conditions under which the services are to be provided—

- (a) the representative organisation concerned is deemed not to be an association of undertakings, for the purposes of section 4 of the Competition Act 2002, and
- (b) the said section 4 does not apply to the collective agreement.

(3) Nothing in *subsection (2)* prevents the application of section 4 to agreements, decisions or concerted practices affecting the terms or conditions under which services are provided otherwise than under and for the purposes of the collective agreement concerned.

(4) A declaration made by the Government under *subsection (2)*—

- (a) does not have effect until it is approved by resolutions passed by each House of the Oireachtas,
- (b) applies to negotiations for amendments to or replacements of a collective agreement,
- (c) continues in effect until it is annulled by resolution passed by either House of the Oireachtas.

(5) (a) In this section, “profession” includes trade, vocation and other occupation.

(b) For the purposes of this section, it is immaterial whether members of a profession provide services as sole traders or as members or employees of partnerships or corporate bodies.”.

—Willie Penrose.

SECTION 2

4. In page 3, before section 2, to insert the following new section:

“Amendment to
Long Title of
Principal Act.

2.—The Principal Act is amended in the Long Title by the substitution of “ARTICLES 101, 102 AND 106 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION” for “ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY”

and

“ARTICLES 101, 102 AND 106” for “ARTICLES 81 AND 82”.”.

—Leo Varadkar.

[SECTION 2]

“Public services and related commercial arrangements.

5. In page 3, before section 2, to insert the following new section:

2.—Before section 4 of the Principal Act, insert the following new section:

“3A.—Undertakings entrusted with the operation of services of general economic interest shall be subject to sections 4 and 5, except insofar as the application of those prohibitions does not obstruct, in law or in fact, the performance of the particular tasks assigned to them.”.”.

—Leo Varadkar.

6. In page 3, before section 2, to insert the following new section:

“2.—The Principal Act is amended by—

(a) the substitution of the following for section 35:

“35.—(1) The Membership of the Authority shall consist of—

(a) a Chairperson and such number of other whole-time members, not being less than 2 or more than 4, as the Minister determines and appoints (but that limitation does not affect an appointment under paragraph (b)),

(b) in any case where it appears to the Minister that a member referred to in paragraph (a) is temporarily unable to discharge his or her duties, a whole-time member appointed by the Minister, for all or part of that period of inability, to act in that member’s place,

(c) an appointment made pursuant to paragraph (b) shall not exceed 6 months and the Minister shall cause the vacancy which arises under paragraph (b) to be advertised and appointed in accordance with subsection (2),

(d) such other number of part-time members as the Minister may determine and appoint in accordance with subsections (2) and (9).

(2) The members of the Authority shall be appointed in the following manner:

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

(b) The Minister shall not submit the name of any person who, in the opinion of the Minister, does not possess sufficient expertise in one or more of the following areas, namely competition law or policy, consumer law or policy or utility regulation.

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

[SECTION 2]

- (i) his or her suitability for appointment to the position of member of the Competition Authority,
 - (ii) his or her qualifications for appointment to the position of member of the Competition Authority,
 - (iii) such other matters pertaining only to the appointment of a member of the Competition Authority.
- (d) The Committee shall be required to confirm or decline the nomination of a person under paragraph (a) to the Minister within 7 days of the evidence under paragraph (c) having been completed.
- (e) Where the Committee confirms the nomination of a person under paragraph (d) the Minister shall order their appointment by resolution of Dáil Éireann.
- (f) Where the Committee declines the nomination of a person under paragraph (d), it shall be required to state to the Minister the reasons for its decision in subsequent private session of the Committee, where requested by the Minister.
- (g) Where the Committee declines the nomination of a person under paragraph (d), the Minister shall nominate two persons, who have not already been nominated under this section, for consideration in respect of each outstanding vacancy.
- (h) Where the Committee declines the nomination of a person under paragraph (d), and the Minister makes a submission under paragraph (g), the Committee may invoke its powers under paragraph (c) in respect of the alternative nominees.
- (i) Where the Committee declines the nomination of a person under paragraph (d), and the Minister makes a submission under paragraph (g), the Committee shall be required to make a recommendation from the alternative candidates submitted under paragraph (g) to fill the remaining vacancies on the Competition Authority.
- (j) The Chairperson of the Oireachtas Committee on Enterprise, Trade and Employment shall, with the approval of that Committee, nominate one of the appointed members as Chairperson of the Competition Authority.
- (3) Notwithstanding any other act or provision, a person who is a civil servant is not eligible for any appointment to the Authority.
- (4) If a person, who is at the time of their appointment to any vacancy to which this section applies a member of staff of the Authority, they shall immediately resign their position as a member of staff of the Authority on appointment under this section.
- (5) The term of office of a member of the Authority shall be a period of five years.

[SECTION 2]

(6) An outgoing member of the Authority shall be eligible for reappointment, but shall not be reappointed more than once in any circumstances.

(7) Each member of the Authority shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for Finance. The Minister shall notify the Committee of such conditions in advance of the appointment being made under subsection (2).

(8) Each member of the Authority may be paid such remuneration, if any, as the Minister with the consent of the Minister for Finance, determines. The Minister shall notify the Committee of such remuneration in advance of the appointment being made under subsection (2).

(9) Sections 15 and 17 of the Civil Service Commissioners Act, 1956, shall apply, with any necessary modifications, in relation to appointments of members of the Authority as they apply in relation to appointments to positions in the civil service and, accordingly, the Minister shall not appoint a person to be such a member unless the Civil Service Commissioners, after holding a competition under that section 15, have, under that section 17, selected the person for appointment and advised the Minister accordingly.

(10) Subject to subsection (9), the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, shall not apply to the office of a member.

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

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

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

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

(13) A member of the Authority may resign his or her office.”.

(b) After section 30 of the Principal Act, insert the following new section:

“Implementation of Recommendations of the Authority.

30A.—(1) Any government department, public body or commercial semi-state body that is the subject of a recommendation of the Authority in respect of its functions under section 30(1)(a) or (b) of this Act shall, within 4 weeks of such recommendation being issued or published:

[SECTION 2]

- (a) issue a statement stating whether or not the government department, public body or commercial semi-state body accepts or rejects the recommendation made by the Authority, including a statement of reasons where the government department, public body or commercial semi-state body rejects the recommendation of the Authority, and
- (b) publish the names of the individuals who will be charged with responsibility for implementing the recommendation of the Authority.

(2) Implementation of recommendations under this section shall be completed in a period which shall not exceed 9 months.

(3) In circumstances where it is envisaged the implementation of a recommendation under this section may exceed the period specified in subsection (2), the government department, public body or commercial semi-state body shall issue in its statement under subsection (1), or in such subsequent statement as may be appropriate when the government department, public body or commercial semi-state body becomes aware that the implementation under this section may exceed the specified period, a statement of the reasons for the delay in implementing the recommendation of the Authority.”.

(c) Amendment to section 4 of the Principal Act:

(i) In section 4(3), after the words “concerted practices” insert the words “including bodies representing a group of undertakings comprised of employees or casual workers”.

(ii) After section 4(3) insert:

“(3a) The Authority may make a declaration under subsection (3) in respect of any body representing undertakings that provide services that are funded wholly or partly by the State. A declaration under this subsection shall be subject to such conditions as the Authority may determine, including, but not limited to, a condition as to the duration of any such exemption and shall be consistent with Article 106 of the Treaty on the Functioning of the European Union.”.”

—Leo Varadkar.

7. In page 3, line 18, to delete “appoint” and substitute “nominate”.

—Arthur Morgan.

8. In page 3, between lines 25 and 26, to insert the following:

“(c) The nominees of the Minister for appointment or reappointment to the Authority shall appear before the relevant Joint Oireachtas Committee.

(d) A person to whom paragraph (a) applies shall, on the request of the Joint Oireachtas Committee on Enterprise, Trade and Innovation, give evidence to the Committee on—

[SECTION 2]

- (i) his or her suitability for appointment to the position of member of the Authority,
- (ii) his or her qualifications for appointment to the position of member of the Authority.
- (e) Where the Joint Oireachtas Committee on Enterprise, Trade and Innovation approves the nomination of a person under paragraph (c) the Minister shall order their appointment by resolution of Dáil Éireann.
- (f) The Joint Oireachtas Committee on Enterprise, Trade and Innovation shall, for the purposes of making recommendations to the Minister under this section and making recommendation in respect of any casual vacancies or other vacancies as they arise on the Authority to keep the membership of the Authority at the statutory minimum requirement, may establish a panel, for such duration, and consisting of such number of persons as the Joint Oireachtas Committee thinks proper.
- (g) Persons placed on a panel established under paragraph (f) shall have experience of, and expertise in matters connected with—
 - (i) the functions of the Authority, and/or
 - (ii) law, economics, public administration, consumer affairs, or business generally.
- (h) The Joint Oireachtas Committee shall have joint responsibility with the Minister for the selection and placing of candidates on a panel established under paragraph (f).".

—Arthur Morgan.

9. In page 4, line 10, after “Minister” to insert “and the relevant Joint Oireachtas Committee”.

—Arthur Morgan.

Section opposed.

—Leo Varadkar.