



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL, 2011 CRIMINAL JUSTICE BILL 2011

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL, 2011 —AN TUARASCÁIL

CRIMINAL JUSTICE BILL 2011 —REPORT

Leasuithe Amendments

1. In page 21, line 31, after “refused” to insert “without reasonable excuse”.
—An tAire Dlí agus Cirt agus Comhionannais.
2. In page 26, line 28, after “document” to insert “(within the meaning of this Act)”.
—An tAire Dlí agus Cirt agus Comhionannais.
3. In page 26, line 29, after “1992 applies” to insert the following:
“or would apply if the document were reproduced in permanent legible form”.
—An tAire Dlí agus Cirt agus Comhionannais.
4. In page 27, between lines 34 and 35, to insert the following:

“Protection for employees from penalisation for disclosing information relating to relevant offences.

20.—(1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee—

- (a) for making a disclosure or for giving evidence in relation to such disclosure in any proceedings relating to a relevant offence, or
- (b) for giving notice of his or her intention to do so.

(2) *Schedule 2** shall have effect in relation to an alleged contravention of *subsection (1)*.

(3) Nothing in *paragraphs (a), (c), (d), (e) and (f)* of the definition of “penalisation” shall be construed in a manner which prevents an employer from—

- (a) ensuring that the business concerned is carried on in an efficient manner, or
- (b) taking any action required for economic, technical or organisational reasons.

(4) (a) If penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee, as referred to in *paragraph (a)* of the definition of “penalisation”, the employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if the employee or his or her parent or guardian, as the case may be, does so, a complaint of such dismissal may not be presented to a rights commissioner under *paragraph 1(1) of Schedule 2**.

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) presents a complaint to a rights commissioner under *paragraph 1(1) of Schedule 2** in respect of a dismissal referred to in *paragraph (a)*, the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.

(5) For the purposes of this section and *Schedule 2**, a reference to "dismissal" includes—

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

(b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

(6) In this section, *section 21*** and in *Schedule 2**—

"contract of employment" means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

"disclosure", in relation to an employee, means a disclosure by the employee to a member of the Garda Síochána of information which he or she knows or believes might be of material assistance in —

(a) preventing the commission by any other person of a relevant offence, or

(b) securing the apprehension, prosecution or conviction of any other person for a relevant offence;

"employee" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

"employer", in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

(a) a person (other than an employee of that person) under whose control and direction an employee works, and

(b) where appropriate, the successor of the employer or an associated employer of the employer;

"penalisation" means any act or omission by an employer, or by 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—

(a) suspension, lay-off or dismissal,

(b) the threat of suspension, lay-off or dismissal,

(c) demotion or loss of opportunity for promotion,

- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Note: This is a reference to the Schedule proposed to be inserted by amendment No. 8.]

**Note: This is a reference to the section proposed to be inserted by amendment No. 5.]

5. In page 27, between lines 34 and 35, to insert the following:

“Offences, etc.

21.—(1) An employee who makes a disclosure knowing it to be false or being reckless as to whether it is false shall be guilty of an offence.

(2) An employer who contravenes *section 20(1)** shall be guilty of an offence.

(3) A person who, upon examination on oath or affirmation authorised under *paragraph 2(7) of Schedule 2***, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence.

(4) A person to whom a notice under *paragraph 2(8) of Schedule 2*** has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence.

(5) A person guilty of an offence under *subsection (1) or (2)* shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

(6) A person guilty of an offence under *subsection (3)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(7) A person guilty of an offence under *subsection (4)* shall be liable on summary conviction to a class A fine.

(8) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

- (a) a person named in the document was, by a notice under *paragraph 2(8)* of *Schedule 2***, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and
- (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under *subsection (4)*, be evidence of the matters so stated without further proof unless the contrary is shown.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 4.]

[**Note: This is a reference to the Schedule proposed to be inserted by amendment No. 8.]

- 6. In page 28, line 16, to delete “19(1)” and substitute “19(1)(b)”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 7. In page 28, line 16, to delete “34(1)” and substitute “34”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 8. In page 30, after line 10, to insert the following:

Section 20*.

“SCHEDULE 2

REDRESS FOR CONTRAVENTION OF *SECTION 20(1)**

Complaints to rights commissioner

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) 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 20(1)** 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 commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) communicate the decision to the parties.

(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, which may include, in a case where the penalisation constitutes a dismissal, reinstatement or re-engagement;
- (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 calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977;

and the references in *clauses (b) and (c)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) Subject to *subparagraph (5)*, 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) Where a delay by an employee in presenting a complaint under this Schedule is due to any misrepresentation by the employer, *subparagraph (4)* shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice.

(6) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances.

(7) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation.

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

(9) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(10) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeals 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(2)* 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,
- (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 *clauses (e) and (f) of subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

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

(4) The following matters, 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)*;
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

(7) The Labour Court shall, on the hearing of any appeal referred to it under *subparagraph (2)*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation.

(8) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice—

- (a) to give evidence in relation to any appeal referred to the Labour Court under *subparagraph (2)*, or
- (b) to produce any document specified in the notice relating to the matter in the person's possession or power.

(9) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

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 and—

- (a) the time for bringing an appeal against the decision has expired but no such appeal has been brought, or
- (b) an appeal has been brought, but it has been abandoned,

the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) or, with the consent of the employee, any trade union of which the employee is a member, 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.

(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.

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

Enforcement of determinations of Labour Court

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by—

- (a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent), or
- (b) with the consent of the employee, any trade union of which the employee is a member,

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.

(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 reference in that subparagraph 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 a reference 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 pay to the employee concerned interest on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is made.

(4) An application under this section 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, trade, business or occupation.

Provisions relating to winding up and bankruptcy

5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the company to an employee, and that Act shall have effect accordingly.

(2) Formal proof of the debts to which priority is given under *subparagraph (1)* shall not be required except in cases where it may otherwise be provided by rules made under the Companies Act 1963.

(3) 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 *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly.

(4) Formal proof of the debts to which priority is given under *subparagraph (3)* shall not be required except in cases where it may otherwise be provided under the Bankruptcy Act 1988.

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

6. (1) Section 1(1) of the Protection of Employees (Employers' Insolvency) Act 1984 (as amended by Schedule 2 to the Employment Permits Act 2006) is amended by the insertion of the following definition after the definition of "the Act of 2006":

“ ‘Act of 2011’ means the *Criminal Justice Act 2011*;”.

(2) Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 (as so amended) is amended—

(a) in subsection (2)(a)—

(i) in subparagraph (xxv), by the deletion of “and” after “of the Act of 2004,”,

(ii) in subparagraph (xxvi), by the substitution of “that Schedule, and” for “that Schedule,” and

(iii) by the insertion of the following subparagraph after subparagraph (xxvi):

“(xxvii) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under *paragraph 1(2)(b)* of *Schedule 2* to the *Act of 2011* or a determination by the Labour Court under *paragraph 2(1)(b)* of that Schedule.”,

(b) in subsection (2)(b), by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”,

(c) in subsection (2)(c), by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”, and

(d) in subsection (9), in the definition of “relevant date”, by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 4.]