SEANAD ÉIREANN

AN BILLE UM PÁ ÍOSTA NÁISIÚNTA (AN COIMISIÚN UM PÁ ÍSEAL), 2015
NATIONAL MINIMUM WAGE (LOW PAY COMMISSION) BILL 2015

LEASUITHE A RINNE AN DÁIL
AMENDMENTS MADE BY THE DÁIL

[No. 42b of 2015] [13 July, 2015]
TITLE

1. In page 3, line 8, after “wage;” the following inserted:

   “to make provision for the purposes of the operation of the Workplace Relations Act 2015 and, for that purpose, to amend that enactment and certain other enactments;”.

SECTION 1

2. In page 3, between lines 9 and 10, the following inserted:

   “PART 1*

   PRELIMINARY AND GENERAL

Short title, collective citation and construction.

1. (1) This Act may be cited as the National Minimum Wage (Low Pay Commission) Act 2015.

   (2) This Act (other than Part 3) and the National Minimum Wage Act 2000 may be cited together as the National Minimum Wage Acts 2000 and 2015 and shall be construed together as one Act.”.

[*This Part comprehended the inclusion of section 1 of the Bill and the section inserted by amendment 3.*]
SECTION 2

SECTION 2
3. In page 3, between lines 11 and 12, the following inserted:

“Repeals
2. Sections 11, 12 and 13 of the Principal Act are repealed.”.

SECTION 5

4. In page 4, line 29, “15 July of the year” deleted and “the third Tuesday falling in July in the year” substituted.

SECTION 9

5. In page 7, lines 21 and 22 deleted.

SECTION 10

6. In page 7, lines 23 to 27 deleted.

NEW SECTIONS

7. In page 7, after line 27, the following inserted:

“PART 3*

WORKPLACE RELATIONS

Definition

11. In this Part—

“Act of 2015” means the Workplace Relations Act 2015;

“Minister” means the Minister for Jobs, Enterprise and Innovation.”.

[*This Part comprehended the inclusion of amendments 8 to 20 inclusive.]

8. In page 7, after line 27, the following inserted:

“Amendment of Industrial Relations Act 1946

12. (1) The Industrial Relations Act 1946 is amended by the insertion, in section 21, of the following subsection:

“(5) A document purporting to be signed by the chairman or the registrar of
the Court stating that—

(a) a person named in the document was, by summons under subsection (1), required to attend before the Court on a day and at a time and place specified in the document, and

(b) a sitting of the Court was held on that day and at that time and place,

shall, in proceedings for an offence under this section, be evidence of the matters so stated unless the contrary is shown.”.

(2) This section shall come into operation on the commencement of section 74 of the Act of 2015.”.

9. In page 7, after line 27, the following inserted:

“Amendment of Redundancy Payments Act 1967

13. (1) The Redundancy Payments Act 1967 is amended by the insertion of the following section:

“Appeal to Labour Court from decision of adjudication officer

39A. Section 44 of the Act of 2015 shall apply to a decision of an adjudication officer given in relation to an appeal under subsection (15), or a question referred to the Director General under subsection (16), of section 39 of this Act as it applies to a decision of an adjudication officer under section 41 of that Act, subject to the following modifications:

(a) the substitution of the following subsection for subsection (1):

‘(1) (a) A party to an appeal under subsection (15), or proceedings in relation to a question referred to the Director General under subsection (16), of section 39 of the Act of 1967 may appeal a decision of an adjudication officer given in that appeal or those proceedings to the Labour Court and, where the party does so, the Labour Court shall—

(i) give the parties to the second-mentioned appeal an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(ii) make a decision in relation to the appeal affirming, varying or setting aside the decision of the adjudication officer to which the appeal relates, and

(iii) give the parties to the appeal a copy of that decision in writing.

(b) The Labour Court shall have power to make any decision in
an appeal under this paragraph that an adjudication officer has power to make on the hearing of an appeal under subsection (15), or a question referred to the Director General under subsection (16), of section 39 of the Act of 1967.

and

(b) any other necessary modifications.

(2) This section shall come into operation on the commencement of section 76 of the Act of 2015.

10. In page 7, after line 27, the following inserted:

“Amendment of Unfair Dismissals Act 1977

14. (1) Section 8 of the Unfair Dismissals Act 1977 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) (a) A claim by an employee against an employer for redress under this Act for unfair dismissal may be referred by the employee to the Director General and, where such a claim is so referred, the Director General shall, subject to section 39 of the Act of 2015, refer the claim to an adjudication officer for adjudication by that officer.

(b) Section 39 of the Act of 2015 shall apply to a claim for redress referred to the Director General under paragraph (a) as it applies to a complaint presented or dispute referred to the Director General under section 41 of that Act, subject to the modification that references, in the said section 39, to a complaint or dispute shall be construed as references to a claim for redress so referred.

(c) An adjudication officer to whom a claim for redress is referred under this section shall—

(i) inquire into the claim,

(ii) give the parties to the claim an opportunity to be heard by the adjudication officer and to present to the adjudication officer any evidence relevant to the claim,

(iii) make a decision in relation to the claim consisting of an award of redress in accordance with section 7 or the dismissal of the claim, and

(iv) give the parties to the claim a copy of that decision in writing.”,

(b) by the substitution of the following subsection for subsection (1A) (inserted by
section 7 of the Unfair Dismissals (Amendment) Act 1993):

“(1A) A decision of an adjudication officer under subsection (1) consisting of an award of redress in accordance with section 7 shall include a statement of the reasons for the award of such redress and the reasons for the adjudication officer’s deciding not to award other redress under that section.”,

(c) by the insertion of the following subsection:

“(1B) Subsection (14) of section 41 of the Act of 2015 applies to a decision of an adjudication officer under subsection (1) as it applies to a decision of an adjudication officer under that section subject to the modification that the words ‘subsection (1) of section 8 of the Act of 1977’ shall be substituted for the words ‘this section’.”,

(d) in subsection (2), by the substitution of—

(i) the words “regulations under subsection (17) of section 41 of the Act of 2015” for the words “regulations under section 17 of this Act made for the purposes of subsection (8) of this section”, and

(ii) the following paragraph for paragraph (b):

“(b) within such period not exceeding 12 months from the date of the relevant dismissal as the adjudication officer considers appropriate, in circumstances where the adjudication officer is satisfied that the giving of the notice within the period referred to in paragraph (a) was prevented due to reasonable cause,”,

(e) by the deletion of subsections (3), (4), (5), (8) and (9), and

(f) by the substitution of the following subsection for subsection (10):

“(10) (a) A dispute relating to a dismissal shall not be referred to an adjudication officer under the Industrial Relations Acts 1946 to 2012 if, in relation to the dismissal—

(i) a recommendation has been made by a rights commissioner under this Act, or a hearing by the Tribunal under this Act has commenced,

(ii) a decision (other than a decision consisting of a dismissal of the claim concerned) has been made by an adjudication officer under this Act,

(iii) a decision has been made by the Labour Court in accordance with subsection (2) of section 8A affirming a decision (consisting of a dismissal of the claim concerned) of an adjudication officer under this Act, or

(iv) a decision has been made by the Labour Court in accordance with the said subsection (2)—
[NEW SECTIONS]

(I) setting aside a decision to which subparagraph (ii) applies, and

(II) not awarding any redress under section 7.

(b) An employee shall not be entitled to redress under this Act in respect of a dismissal if, in relation to the dismissal—

(i) a recommendation has been made by a rights commissioner or an adjudication officer under the Industrial Relations Acts 1946 to 2012, or

(ii) a hearing by the Labour Court under those Acts has commenced.”.

(2) Section 8A (inserted by paragraph (h) of subsection (1) of section 80 of the Act of 2015) of the Unfair Dismissals Act 1977 is amended by the substitution of the following subsection for subsection (2):

“(2) Section 44 of the Workplace Relations Act 2015 shall apply to a decision of an adjudication officer given in respect of a claim for redress under this Act by an employee as it applies to a decision of an adjudication officer given in proceedings under section 41 of that Act, subject to the following modifications:

(a) the substitution of the following subsection for subsection (1):

‘(1) (a) A party to a claim for redress under the Act of 1977 may appeal a decision of an adjudication officer given in relation to that claim to the Labour Court and, where the party does so, the Labour Court shall—

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

(ii) make a decision in relation to the appeal affirming, varying or setting aside the decision of the adjudication officer to which the appeal relates, and

(iii) give the parties to the appeal a copy of that decision in writing.

(b) A decision of the Labour Court under paragraph (a), may include an award of redress under section 7 of the Act of 1977.’;

and

(b) any other necessary modifications.”.

(3) Section 11 (inserted by paragraph (k) of subsection (1) of section 80 of the Act of 2015) is amended, in subsection (2), by the insertion of “or the Companies Act 2014” after “the Companies Acts”.

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[NEW SECTIONS]

(4) This section shall come into operation on the commencement of section 80 of the Act of 2015.”.

11. In page 7, after line 27, the following inserted:

“Amendment of Protection of Employees (Employers’ Insolvency) Act 1984

15. (1) The Protection of Employees (Employers’ Insolvency) Act 1984 is amended by the insertion of the following section:

“Appeal to Labour Court from declaration of adjudication officer under section 9

9A. Section 44 of the Act of 2015 shall apply to a declaration of an adjudication officer given in relation to a complaint under section 9 as it applies to a decision of an adjudication officer given in proceedings under section 41 of that Act, subject to the following modifications:

(a) the substitution of the following subsection for subsection (1):

‘(1) A party to proceedings in relation to a complaint under section 9 of the Act of 1984 may appeal a declaration of an adjudication officer given in those proceedings to the Labour Court and, where the party does so, the Labour Court shall—

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

(b) make a decision in relation to the appeal affirming, varying or setting aside the declaration of the adjudication officer to which the appeal relates, and

(c) give the parties to the appeal a copy of that decision in writing.’;

and

(b) any other necessary modifications.”.

(2) This section shall come into operation on the commencement of section 81 of the Act of 2015.”.

12. In page 7, after line 27, the following inserted:

“Amendment of Terms of Employment (Information) Act 1994

16. (1) The Terms of Employment (Information) Act 1994 is amended—
[NEW SECTIONS]

(a) in section 6A (inserted by section 18(d) of the Industrial Relations (Amendment) Act 2012), by the substitution of the following subsection for subsection (2):

“(2) In this section ‘inspector’ has the same meaning as it has in the Workplace Relations Act 2015.”,

and

(b) in paragraph (a) of subsection (1) of section 7 (inserted by Part 1 of Schedule 7 to the Act of 2015), by the substitution of “before, on or after the commencement of section 8 of the Workplace Relations Act 2015” for “before the commencement of section 8 of the Workplace Relations Act 2015”.

(2) This section shall come into operation on the commencement of Part 4 of the Act of 2015.”.

13. In page 7, after line 27, the following inserted:

“Amendment of Employment Equality Act 1998
17. (1) The Employment Equality Act 1998 is amended—

(a) by the substitution of the following section for section 83:

“83. Section 44 of the Act of 2015 shall apply to a decision of the Director General of the Workplace Relations Commission under section 79 as it applies to a decision of an adjudication officer under section 41 of that Act, subject to the following modifications:

(a) the substitution of the following subsection for subsection (1):

‘(1) (a) A party to a case referred to the Director General of the Workplace Relations Commission under section 77 of the Act of 1998 may appeal a decision of the Director General given in an investigation in relation to that case under section 79 of that Act to the Labour Court and, where the party does so, the Labour Court shall—

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

(ii) make a decision in relation to the appeal affirming, varying or setting aside the decision of the adjudication officer to which the appeal relates, and

(iii) give the parties to the appeal a copy of that decision in writing.

(b) The Labour Court shall have power to grant such redress in an appeal under this paragraph as the Director General has
[NEW SECTIONS]

power to grant in an investigation under section 79 of the
Act of 1998.’;

and

(b) any other necessary modifications.”,

and

(b) in section 101, by—

(i) the insertion of “or” after “begun” in paragraph (a) of subsection (4), and

(ii) the substitution of the following paragraph for paragraph (b) of subsection (4):

“(b) an adjudication officer has made a decision to which subsection (1)
of section 8 of the Unfair Dismissals Act 1977 applies in respect of
the dismissal.”.

(2) This section shall come into operation on the commencement of section 83 of the Act
of 2015.”.

14. In page 7, after line 27, the following inserted:

“Amendment of Equal Status Act 2000

18. (1) The Equal Status Act 2000 is amended by the substitution of the following section for
section 31:

“31. Section 43 of the Act of 2015 shall apply to a decision under section 25 as
it applies to a decision of an adjudication officer under section 41 of that
Act, subject to—

(a) the modification that the following paragraph is substituted for
paragraph (b) of subsection (1):

‘(b) on application to it in that behalf, with the consent of the
complainant, by the Irish Human Rights and Equality
Commission,’,

and

(b) the following modifications:

(i) references to a complaint or dispute shall be construed as
references to a case so referred;

(ii) the reference to section 41 shall be construed as a reference to
section 25 of this Act;

(iii) in subsection (1), the words ‘decision of the Director General of
the Workplace Relations Commission under section 25 of this
NEW SECTIONS

Act’ shall be substituted for the words ‘decision of an adjudication officer under that section’;

(iv) the deletion of subsection (2);

(v) the words ‘decision of the Director General of the Workplace Relations Commission under section 25 of this Act’ shall be substituted for the words ‘decision of an adjudication officer’ in each place that they occur; and

(vi) references to employee and employer shall be construed as references to complainant and respondent respectively.”.

(2) This section shall come into operation on the commencement of section 84 of the Act of 2015.”.

15. In page 7, after line 27, the following inserted:

“Amendment of Freedom of Information Act 2014

19. (1) Part 1 of Schedule 1 to the Freedom of Information Act 2014 is amended by the substitution of the following subparagraph for subparagraph (k):

“(k) the Workplace Relations Commission—

(i) insofar as it relates to records concerning the provision of mediation services under the Employment Equality Acts 1998 to 2011, the Equal Status Acts 2000 to 2012 or the Pensions Acts 1990 to 2014, where parties to the process are participating in a voluntary capacity to try to settle such disputes, or

(ii) insofar as it relates to records concerning—

(I) the referral of a complaint or dispute for resolution under section 39 of the Workplace Relations Act 2015,

(II) attempts made in accordance with that section to resolve any such complaint or dispute, or

(III) the resolution of any such complaint or dispute in accordance with that section.”.

(2) This section shall come into operation on the commencement of sections 82, 83 and 84 of the Act of 2015.”.
16. In page 7, after line 27, the following inserted:

“Amendment of Workplace Relations Act 2015

20. (1) The Act of 2015 is amended—

(a) in subsection (2) of section 1, by the substitution of “sections 8(7), 57(3) and 66(3)” for “subsection (7) of section 8”,

(b) in section 2, by the insertion of the following definitions:

“‘Act of 1984’ means the Protection of Employees (Employers’ Insolvency) Act 1984;

‘equality officer’ has the same meaning as it has in Part VII of the Act of 1998;

‘equality mediation officer’ has the same meaning as it has in Part VII of the Act of 1998;

‘rights commissioner’ means a person appointed under section 13 of the Act of 1969;”,

(c) in subsection (4) of section 13, by the substitution of the following paragraph for paragraph (f):

“(f) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.”,

(d) in paragraph (b) of subsection (2) of section 28, by the substitution of “a provision to which this section applies” for “any employment enactment”,

(e) in paragraph (a) of subsection (15) of section 28, by the substitution of “a provision to which this section applies” for “a relevant enactment”,

(f) in section 40, by the deletion of subsection (10),

(g) by the substitution of the following subsection for section 53:

“53. (1) Where a decision or recommendation in relation to a complaint or dispute to which subsection (2) or (4) of section 8 applies was made
by a rights commissioner before the commencement of this Part and no appeal was brought from the decision or recommendation before such commencement, the decision or recommendation shall be appealable to the Labour Court under section 44 as if the decision or recommendation were a decision of an adjudication officer under section 41.

(2) Where a decision or recommendation in relation to a complaint or dispute to which subsection (2) or (4) of section 8 applies was not made before the commencement of this Part, any decision or recommendation made by a rights commissioner in relation to the complaint or dispute after such commencement shall be appealable to the Labour Court under section 44 as if the decision were a decision of an adjudication officer under section 41.”,

(i) by the insertion of the following section in Part 4:

“Performance of functions of rights commissioners after commencement of this Part

53A. The functions standing vested in a rights commissioner immediately before the commencement of this Part shall, in relation to complaints or disputes referred to in subsection (2) or (4) of section 8 or subsection (3) of section 52, continue to be performable after such commencement by a person who immediately before such commencement was a rights commissioner.”,

(j) in section 74, by the deletion of paragraph (b),

(k) in section 76, by the deletion of paragraph (d) of subsection (1),

(l) in section 80, by—

(i) the deletion of subparagraphs (i), (ii), (iii), (iv), (ix), (x) and (xi) of paragraph (g) of subsection (1), and

(ii) the insertion of the following subsection:

“(1A) The functions standing vested in a rights commissioner immediately before the commencement of this section shall, in relation to a claim for redress referred to in subsection (2), continue to be performable after such commencement by a person who immediately before such commencement was a rights commissioner.”,

(m) in section 81, by—

(i) the deletion of subsections (4) and (5), and

(ii) the insertion of the following subsection:

“(4) The amendment of the Act of 1984 effected by this section shall not apply in relation to a complaint presented to the Employment Appeals Tribunal under section 9 of that Act before the commencement of this section.”,
(n) in section 83, by—
(i) the deletion of paragraphs (g) and (m) of subsection (1), and
(ii) the insertion of the following subsections:

“(3) The functions standing vested in an equality officer immediately before the commencement of this section shall, in relation to a case referred to in subsection (2), continue to be performable after such commencement by a person who immediately before such commencement was an equality officer.

(4) The functions standing vested in an equality mediation officer immediately before the commencement of this section shall, in relation to a case referred to in subsection (2), continue to be performable after such commencement by a person who immediately before such commencement was an equality mediation officer.”,

(o) in subsection (1) of section 84, by—
(i) the deletion of paragraph (g), and
(ii) the insertion of the following subsection:

“(3) The functions standing vested in an equality officer immediately before the commencement of this section shall, in relation to a case referred to in subsection (2), continue to be performable after such commencement by a person who immediately before such commencement was an equality officer.

(4) The functions standing vested in an equality mediation officer immediately before the commencement of this section shall, in relation to a case referred to in subsection (2), continue to be performable after such commencement by a person who immediately before such commencement was an equality mediation officer.”,

(p) in subparagraph (3) of paragraph 3 of Schedule 3, by the substitution of the following clause for clause (g):

“(g) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.”,

and

(q) in Schedule 4, by—
(i) the deletion of the following:

<table>
<thead>
<tr>
<th>No. 10 of 1977</th>
<th>Unfair Dismissals Act 1977</th>
<th>Section 14(1), (2) and (4)</th>
</tr>
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<tbody>
<tr>
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</table>
and

(ii) the deletion of the following:

“...

| No. 5 of 1994 | Terms of Employment (Information) Act 1994 | Sections 3(1) and 5 |

.

(2) This section (other than paragraph (a) of subsection (1)*) 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 different provisions.”.

[*This is a reference to subsection (1) inserted by this amendment.]

17. In page 7, after line 27, the following inserted:

“Transfer of property of Director of Equality Tribunal to Workplace Relations Commission

21. (1) On the commencement of sections 83 and 84 of the Act of 2015 all property, including choses-in-action, that immediately before such commencement, was vested in the Director of the Equality Tribunal shall stand vested in the Workplace Relations Commission without any assignment.

(2) Every chose-in-action vested in the Workplace Relations Commission by virtue of subsection (1) may, on and from the commencement of sections 83 and 84 of the Act of 2015, be sued on, recovered or enforced by the Workplace Relations Commission in its own name, and it shall not be necessary for the Workplace Relations Commission or the Director of the Equality Tribunal to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

(3) On the commencement of sections 83 and 84 of the Act of 2015 all records that, immediately before such commencement, were records of the Director of the Equality Tribunal shall be records of the Workplace Relations Commission and shall, accordingly, be transferred to the Workplace Relations Commission.”.

18. In page 7, after line 27, the following inserted:

“Transfer of rights and liabilities of Director of Equality Tribunal to Workplace Relations Commission

22. (1) All rights and liabilities of the Director of the Equality Tribunal subsisting immediately before the commencement of sections 83 and 84 of the Act of 2015 and arising by virtue of any contract or commitment (expressed or implied) shall on such commencement stand transferred to the Workplace Relations Commission.
NEW SECTIONS

(2) Every right and liability transferred by subsection (1) to the Workplace Relations Commission may, on and after the commencement of sections 83 and 84 of the Act of 2015, be sued on, recovered or enforced by or against the Workplace Relations Commission in its own name, and it shall not be necessary for the Workplace Relations Commission or the Director of the Equality Tribunal to give notice to the person whose right or liability is transferred by that subsection of such transfer.”.

19. In page 7, after line 27, the following inserted:

“Liability for loss occurring before commencement of sections 83 and 84 of Act of 2015

23. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the commencement of sections 83 and 84 of the Act of 2015 of any of the functions of the Director of the Equality Tribunal shall after such commencement, lie against the Workplace Relations Commission and not against the Director of the Equality Tribunal.

(2) Any legal proceedings pending immediately before the commencement of sections 83 and 84 of the Act of 2015 to which the Director of the Equality Tribunal is a party, shall be continued, with the substitution in the proceedings of the Workplace Relations Commission for the Director of the Equality Tribunal.

(3) Where, before the commencement of sections 83 and 84 of the Act of 2015, agreement has been reached between the parties concerned in settlement of a claim to which subsection (1) relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the Director of the Equality Tribunal, be enforceable against the Workplace Relations Commission and not against the Director of the Equality Tribunal.

(4) Any claim made or proper to be made by the Director of the Equality Tribunal in respect of any loss or injury arising from the act or default of any person before the commencement of sections 83 and 84 of the Act of 2015 shall be regarded as having been made by or proper to be made by the Workplace Relations Commission and may be pursued and sued for by the Workplace Relations Commission as if the loss or injury had been suffered by the Workplace Relations Commission.”.

20. In page 7, after line 27, the following inserted:

“Provisions consequent upon transfer of property, rights and liabilities to Workplace Relations Commission

24. (1) Anything commenced and not completed before the commencement of sections 83
[NEW SECTIONS]

and 84 of the Act of 2015 by or under the authority of the Director of the Equality Tribunal may, on or after the commencement of sections 83 and 84 of the Act of 2015, be carried on or completed by the Director General of the Workplace Relations Commission.

(2) Every instrument made under an enactment and every document (including any certificate) granted or made by the Director of the Equality Tribunal shall, if and in so far as it was operative immediately before the commencement of sections 83 and 84 of the Act of 2015, have effect on and after such commencement as if it had been granted or made by the Director General of the Workplace Relations Commission.

(3) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Workplace Relations Commission under section 21* or 22** shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.”.

[*This is a reference to the section inserted by amendment 17.]
[**This is a reference to the section inserted by amendment 18.]

SCHEDULE

21. In page 9, line 25, “or” deleted where it secondly occured.

22. In page 9, lines 26 to 29 deleted and the following substituted:

“(e) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014,

(f) is a person to whom a declaration under section 150 of the Companies Act 1990 applies, or

(g) is a restricted person within the meaning of Chapter 3 of Part 14 of the Companies Act 2014.”.