



**An Bille um Sheirbhísí Poiblí agus um Shainfháil Phoiblí (Cearta Oibrithe),
2017**

Public Services and Procurement (Workers' Rights) Bill 2017

Mar a tionscnaíodh

As initiated



**AN BILLE UM SHEIRBHÍSÍ POIBLÍ AGUS UM SHAINFHÁIL PHOIBLÍ (CEARTA
OIBRITHE), 2017**
PUBLIC SERVICES AND PROCUREMENT (WORKERS' RIGHTS) BILL 2017

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ACTS REFERRED TO

Adoptive Leave Acts 1995 and 2005
Carer's Leave Act 2001 (No. 19)
Employment Equality Acts 1998 to 2015
Industrial Relations (Amendment) Act 2015 (No. 27)
Industrial Relations Acts 1946 to 2015
Maternity Protection Acts 1994 and 2004
Minimum Notice and Terms of Employment Acts 1973 to 2005
National Minimum Wage Act 2000 (No. 5)
Organisation of Working Time Act 1997 (No. 20)
Parental Leave Acts 1998 and 2006
Payment of Wages Act 1991 (No. 25)
Protection of Employees (Part-Time Work) Act 2001 (No. 45)
Protection of Employees (Temporary Agency Work) Act 2012 (No. 13)
Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007
(No. 27)
Protection of Employment Acts 1977 to 2014
Protection of Young Persons (Employment) Act 1996 (No. 16)
Redundancy Payments Acts 1967 to 2014
Safety, Health and Welfare at Work Acts 2005 to 2014
Terms of Employment (Information) Acts 1994 to 2014
Unfair Dismissals Acts 1977 to 2015



AN BILLE UM SHEIRBHÍSÍ POIBLÍ AGUS UM SHAINFHÁIL PHOIBLÍ (CEARTA OIBRITHE), 2017
PUBLIC SERVICES AND PROCUREMENT (WORKERS' RIGHTS) BILL 2017

Bill

entitled

5

An Act to remove wages and working conditions of employees from being used as elements of competition among bidders for public contracts; to resist any downward pressure in wage rates and workers' rights; to safeguard the highest minimum standards established nationally by law, arbitration or collective bargaining and for that purpose to specify particular considerations which will apply to the selection of tenderers and to specify particular considerations which will apply to the awarding of contracts to economic operators and to provide that different considerations may apply in respect of procurements whose value are either above or below the EU threshold and to provide for related matters.

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Be it enacted by the Oireachtas as follows:

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PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Public Services and Procurement (Workers' Rights) Act 2017.
- (2) This Act comes into operation on such day or days as the Minister may by order or orders appoint, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

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Interpretation

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2. (1) In this Act—
“contracting authority” means—
 - (a) a State, regional or local authority,
 - (b) a body governed by public law, or

- (c) an association formed by one or more such authorities or one or more such bodies governed by public law;
- “economic operator” means any natural or legal person or contracting authority, or a group of such persons or authorities, including temporary associations of undertakings, who or which offers— 5
- (a) the execution of works or a work, or both, or
- (b) the supply of products or the provision of services, on the market;
- “employment law” means the Acts which are listed in the *Schedule* together with any statutory instruments made thereunder;
- “living wage” means the average gross salary as defined by the Living Wage Technical Group which is reviewed on an annual basis and which is set at a level which is intended to enable a full-time employed adult (without dependents) afford a socially acceptable standard of living in the State; 10
- “Living Wage Technical Group” means the Living Wage Technical Group which established in March 2014 for the purpose of establishing a methodology for calculating the level of a Living Wage which should apply in Ireland; 15
- “Minister” means the Minister for Public Expenditure and Reform;
- “zero or precarious hours contract” means a contract of employment which—
- (a) requires an employee to make himself or herself available to work for a certain number of hours per week (“the contract hours”) but which does not oblige the employer to make work available for those hours, or for a set percentage of those hours, or 20
- (b) requires an employee to make himself or herself available to work as and when the employer requires him or her to do so,
- (c) imposes the type of requirements referred to in *paragraphs (a) and (b)*, or 25
- (d) fails to specify guaranteed working hours,
- and includes a contract where an employer seeks to cloak a work arrangement so as to falsely convey the impression of the apparent employment taking the form of an independent contracting arrangement for the purpose of avoiding acceptance of responsibilities which are normally attributable to an employer in an employer-employee relationship. 30
- (2) (a) In this Act, “EU threshold” means the financial threshold prescribed from time to time by an enactment above which procurement processes are subject to requirements which are derived from EU law.
- (b) The relevant EU thresholds which are applicable at the time of the passing of this Act are set out in a Table to this section. 35

TABLE

Focus of the Procurement Process	Financial Threshold	
Public works (including utilities and concessions)	€5,225,000	
Central Government supplies and services (non-utility/non-concession)	€135,000	5
Local and regional authorities (non-utility/non-concession)	€209,000	
Services falling within the so-called “light touch” regime	€750,000	
Utilities supplies and services	€418,000	

Regulations

3. (1) The Minister may make regulations prescribing any matter which is referred to in this Act as prescribed or to be prescribed or in relation to any matter referred to in this Act as the subject of regulations or for the purposes of enabling any provision of this Act to have full effect. 10
- (2) Every regulation or order made by the Minister shall be laid before each House of the Oireachtas as soon as practicable after they are made and, if a resolution annulling the regulation, order or rules is passed by either House within the next subsequent 21 days on which that House has sat after the regulation, order or rules are laid before it, the regulation, order or rules shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 15
- (3) Regulations made under this Act may— 20
- (a) include such consequential, incidental, transitional or supplementary provisions as may be considered by the Minister to be necessary or appropriate for the purposes of this Act, and
- (b) apply, either generally or by reference, to a specified class or classes of persons or category or categories of recognised school or to any other matter as may be considered by the Minister to be appropriate. 25

PART 2

PROCUREMENT PROCESSES BELOW THE EU THRESHOLD

Application of this Part

4. This Part applies to procurements which are of a value, net of VAT, which is at a level which is less than the financial value of the EU threshold applicable to that procurement. 30

Selection process – Disqualifying Considerations

5. A contracting authority shall exclude from the selection process of a procurement procedure, any economic operator in circumstances where that economic operator has, during the three years preceding the initiation of the selection process— 35
- (a) breached any aspect of employment law,
- (b) failed to adhere to the terms of any decisions or determinations of either the

Workplace Relations Commission or the Labour Court, or

- (c) failed to comply with the terms of non-binding and local collective agreements in respect of its employees,
- (d) failed to recognise a trade union which represents a number of its employees,
- (e) failed to honour a condition of employment applicable to the relevant sector or industry which had been set by a Registered Employment Agreement or a Sectorial Employment Order within the meaning of the Industrial Relations (Amendment) Act 2015; 5
- (f) employed one or more persons on a zero or precarious hours contract, or
- (g) sub-contracted work or services to any other firm in respect of which there is evidence that the acts or omissions of that other firm has given rise to a failure or breach of the type mentioned in *paragraphs (a) to (f)*. 10

Award process – Considerations

- 6. (1) In assessing a tender, a contracting authority shall apply a system of weighting which adheres to the requirements of this section. 15
- (2) A contracting authority may decide not to award a contract to the tenderer submitting the most economically advantageous tender where the authority has assessed the tender by reference to specified weighting criteria provided for in *subsection (3)*.
- (3) In assessing a tender, a contracting authority shall assign additional weighting to a tenderer in respect of each of the *paragraphs (a) to (b)* in circumstances where the tenderer can demonstrate that it— 20
 - (a) remunerates its employees at a level which is equivalent to or above the living wage, and
 - (b) applies in respect of its employees conditions of labour which are not less favourable than the highest minimum standards established nationally by law, arbitration or collective bargaining for work or services of the same character in the trade or industry concerned. 25

PART 3

PROCUREMENT PROCESSES ABOVE THE EU THRESHOLD

Application of this Part 30

- 7. This Part applies to procurements which are of a value, net of VAT, which is at a level which is greater than the financial value of the EU threshold applicable to that procurement.

Selection process – Disqualifying Considerations

- 8. (1) A contracting authority may exclude from the selection process of a procurement procedure, any economic operator in circumstances where that economic operator has 35

during the three years preceding the initiation of the selection process—

- (a) been found to have breached a provision of employment law,
 - (b) failed to recognise a trade union which represents a number of its employees,
 - (c) failed to engage in meaningful negotiations with duly selected employee representatives, 5
 - (d) sub-contracted work or services to any other firm in respect of which there is evidence that other firm has—
 - (i) through act or omission given rise to a failure or breach of the type mentioned in *paragraphs (a) to (c)*, or
 - (ii) availed of child labour in a country where any of the goods or services produced pursuant to a tender have been produced, or has otherwise contravened the employment laws of that country. 10
- (2) Notwithstanding *section 2*, in *subsection (1)(d)*, “employment laws” mean any laws applicable in the relevant country which are directed at providing legally enforceable rights or other forms of protection for persons who are in employment. 15

Award process – Considerations

9. (1) In assessing a tender, a contracting authority shall apply a system of weighting which adheres to the requirements of this section.
- (2) A contracting authority may decide not to award a contract to the tenderer submitting the most economically advantageous tender where the authority has assessed the tender by reference to specified weighting criteria provided for in *subsection (3)*. 20
- (3) In assessing a tender, a contracting authority shall assign additional weighting to a tenderer in respect of each of the *paragraphs (a) to (f)* in circumstances where the tenderer can demonstrate that it—
- (a) recognises one or more trade unions which represents a number of its employees, 25
 - (b) remunerates its employees at a level which is equivalent to or above the living wage,
 - (c) applies in respect of its employees conditions of labour which are not less favourable than the highest minimum standards established nationally by law, arbitration or collective bargaining for work or services of the same character in the trade or industry concerned, 30
 - (d) does not employ persons on a zero or precarious hours contract,
 - (e) does not employ more than 10 per cent of its workforce on fixed term contracts, and
 - (f) is in full compliance with the terms of all non-binding and local collective agreements in respect of its employees. 35

PART 4

MISCELLANEOUS

Amendment of 2016 Regulations

- 10.** The European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) are amended in Regulation 18 by substituting the following for paragraph (4)— 5

“(4) (a) In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7. 10

(b) A contracting authority shall ensure that public contracts entered into by it require that the obligations referred to in subparagraph (a) are complied with.”.

Transitional provisions 15

- 11.** (1) The provisions of this Act do not apply to—

- (a) a contract award procedure, or
- (b) a design contest, commenced by a contracting authority before the commencement of this Act.

- (2) For the purposes of *subsection (1)*, a contract award procedure or design contest has been commenced by a contracting authority before the commencement of this Act if, before that date— 20

(a) the contracting authority has sent a notice to the Publications Office of the European Union in order to invite tenders or requests to be selected to tender for, or to negotiate in respect of, a proposed public contract or framework agreement, 25

(b) the contracting authority has published any form of advertisement seeking offers or expressions of interest in a proposed public contract or framework agreement,

(c) the contracting authority has contacted any economic operator in order to—

(i) seek expressions of interest or offers in respect of a proposed public contract or framework agreement, or 30

(ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed public contract or framework agreement, or

(d) the contracting authority has sent a notice to the Official Journal in accordance with the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329 of 2006) in order to publicise its intention to hold a design contest. 35

- (3) This Act does not apply to the award of a specific contract based on a framework agreement where the framework agreement was concluded before the commencement

of this Act.

SCHEDULE

Section 2

Adoptive Leave Acts 1995 and 2005	
Carer's Leave Act 2001	
Employment Equality Acts 1998 to 2015	5
Industrial Relations Acts 1946 to 2015	
Maternity Protection Acts 1994 and 2004	
Minimum Notice and Terms of Employment Acts 1973 to 2005	
National Minimum Wage Act 2000	
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Redundancy Payments Acts 1967 to 2014	
Safety, Health and Welfare at Work Acts 2005 to 2014	20
Terms of Employment (Information) Acts 1994 to 2014	
Unfair Dismissals Acts 1977 to 2015	

An Bille um Sheirbhísí Poiblí agus um
Shainfháil Phoiblí (Cearta Oibrithe), 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chur deireadh le pá agus coinníollacha oibre fostaithe a úsáid mar ghnéithe iomaíochta i measc tairgeoirí ar chonarthaí poiblí; do chur in aghaidh aon bhrú ó thaobh rátaí pá agus cearta oibrithe; do chosaint na gcaighdeán íosta is airde arna mbunú go náisiúnta le dlí, eadráin nó cómhargántaíocht agus, chun na críche sin, do shonrú cúinsí áirithe a mbeidh feidhm acu maidir le tairgeoirí a roghnú agus do shonrú cúinsí áirithe a mbeidh feidhm acu maidir le conarthaí a dhámhachtain d'oibritheoirí eacnamaíochta agus do dhéanamh socrú go bhféadfaidh feidhm a bheith ag cúinsí éagsúla i leith sainfháil a bhfuil a luach os cionn nó faoi bhun thairseach AE agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Na Teachtaí Bríd Nic Gabhann, Gino Ó Cionaoith
agus Risteard Buid Bairéid a thug isteach,*

22 Meitheamh, 2017

Public Services and Procurement (Workers'
Rights) Bill 2017

BILL

(as initiated)

entitled

An Act to remove wages and working conditions of employees from being used as elements of competition among bidders for public contracts; to resist any downward pressure in wage rates and workers' rights; to safeguard the highest minimum standards established nationally by law, arbitration or collective bargaining and for that purpose to specify particular considerations which will apply to the selection of tenderers and to specify particular considerations which will apply to the awarding of contracts to economic operators and to provide that different considerations may apply in respect of procurements whose value are either above or below the EU threshold and to provide for related matters.

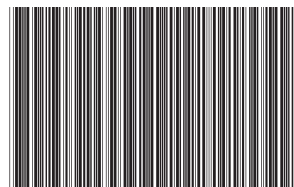
*Introduced by Deputies Brid Smith, Gino Kenny and
Richard Boyd Barrett,*

22nd June, 2017

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