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**An Bille um Chaidreamh san Áit Oibre (Forálacha  
Ilghnéitheacha), 2021**  
**Workplace Relations (Miscellaneous Provisions) Bill  
2021**

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*Meabhrán Míniúcháin*  
*Explanatory Memorandum*

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**AN BILLE UM CHAIDREAMH SAN ÁIT OIBRE (FORÁLACHA  
ILGHNÉITHEACHA), 2021**  
**WORKPLACE RELATIONS (MISCELLANEOUS PROVISIONS)**  
**BILL 2021**

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**EXPLANATORY MEMORANDUM**

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The purpose of this Bill is to ensure that the matters of immediate concern identified by the Supreme Court in its majority decision in the *Zalewski* case are remedied in statute. These remedies relate to the necessity to ensure that administration of justice is capable of being conducted in public; and the provision of statutory authority to administer oaths/affirmations in circumstances where there is a material dispute of fact.

This requirement to administer justice in public will also have an impact on the routine anonymisation of parties under section 41(14) of the 2015 Act.

The remedies must be carried to the Workplace Relations Act 2015 as well as the Equal Status Act 2000, Employment Equality Act 1998, Protection of Employment (Employers' Insolvency) Act 1984; Unfair Dismissals Act 1977, and Redundancy Payments Act 1967. These separate Acts contain standalone provisions in relation to proceedings before the Director General/adjudication officer.

While not subject to an express declaration of unconstitutionality by the Supreme Court, the majority decision noted and expressed concern about the statutory drafting concerning the removal of an adjudication officer. This provision is now remedied in section 3 of the Bill by the provisions of a Constitutionally robust and fair procedure, should the requirement ever arise.

Also, the Industrial Relations Acts of 1946 and 1969 are remedied by an express statement that the Chairperson, the Deputy Chairs, and the Ordinary Members of the Labour Court are independent in the performance of their functions.

Similarly, while the fact that the WRC Act provides for the enforcement of decisions to be a matter for the District Court, the Supreme Court found the provision to be lacking in fairness. Accordingly, the provision has been remedied to ensure that employers' have a right to be notified and heard.

**Provisions of the Bill**

*Section 1* contains definitions.

*Section 2* is a technical amendment required to facilitate the introduction of amendments in section 41 of the Workplace Relations Act concerning the offence of perjury.

*Section 3* contains an amendment to section 40 of the Act of 2015

The purpose of this amendment is to provide for a fair procedure for the revocation of an adjudicator's warrant.

Section 4 contains an amendment of section 41 of the Act of 2015

In respect of the provision in section 41(13) of the Workplace Relations Act 2015, which currently provides that "*Proceedings under this section before an adjudication officer shall be conducted otherwise than in public*", the court held (para. 148) that it was appropriate to declare subsection (13) repugnant to the Constitution, and that the effect of this is that "*the prohibition on public hearings is removed, and proceedings may, but not must, be heard in public.*"

The proposed amendment provides the adjudication officer to whom a complaint or dispute has been referred with a discretion to direct that either the whole or part of the relevant proceedings can take place otherwise than in public, where this would be desirable in light of the nature or circumstances of the case or the interests of justice. The default position in respect of such proceedings is that they would be held in public. Pursuant to this provision the adjudication officer can make this determination of their own motion, but it does not exclude parties to a complaint or dispute applying to the adjudication officer to have the whole or part of the proceedings held in private.

In respect of the proposed substitution of subsection (14). While the judgment of the Court did not address the issue of automatic anonymisation (which is currently provided for in subsection (14)), it is the Department's view, supported by legal advice, that maintaining a policy of anonymisation of all published decisions is contrary to the requirement that justice be administered in public.

Paragraph (b) of subsection (14) provides an adjudication officer with the *vires* to effectively direct the Commission, if he or she is satisfied that special circumstances exist, not to name parties in the published decision.

A further Constitutional issue was identified by the court in respect of the absence of any provision relating to the administration of oaths or an associated penalty for giving false evidence. O'Donnell J noted, at para 144:

"I consider that the absence of at least a capacity to allow the adjudication officer to require that certain evidence be given on oath is inconsistent with the Constitution. I appreciate that one possible contention is that a blanket rule is easier to apply since, if the question of evidence on oath becomes a matter for discretion and only applicable in certain cases, it is an issue which may be raised in many cases, and, if an incorrect decision is made, may lead to the overall decision being quashed. This, in turn, might lead to adjudication officers feeling that the safest route is to concede the procedure even when it is not required, and possibly unhelpful, and leading, inevitably therefore, to greater and unnecessary formality in the proceedings. However, this type of problem is inevitable in any form of judicial decision-making and is a reason to have experienced decision-makers. Difficulty of decision-making cannot be designed out of a system intended to decide difficult disputes."

The court found (at para. 148 of the majority judgment) that "*it is appropriate to merely declare that the absence of provision for the administration of an oath, or any possibility of punishment for giving false evidence, is inconsistent with the Constitution.*"

The amendment at subsection 12A introduces the statutory power for the administration of oaths/affirmations, and provides for a criminal offence of wilfully and corruptly providing false evidence under oath or while

subject to such an affirmation. This provision is aligned with section 12 of the Criminal Justice (Perjury and Related Offences) Bill 2018 (Bill 112 of 2018).

*Section 5* provides an amendment of section 43 of the Act of 2015. The purpose of this amendment is to strengthen the rights of employers in matters relating to the enforcement of decisions of an adjudication officer in the District Court.

*Section 6* provides an amendment to section 10 of the Industrial Relations Act 1946. The purpose of these amendments is to provide for the statutory independence of the chairperson and ordinary members of the Labour Court. A further amendment to section 21 of the 1946 Act has been provided to align the offence to that provided for in the Criminal Justice (Perjury and Related Offences) Bill 2018 (Bill 112 of 2018).

*Section 7* provides for an amendment of section 39 of the Redundancy Payments Act 1967 concerning proceedings in public.

*Section 8* provides an amendment of section 4 of the Industrial Relations Act 1969. The purpose of this amendment is to provide for the statutory independence in the performance of the functions of the deputy chairs of the Labour Court.

*Section 9* provides for an amendment of section 8 of the Unfair Dismissals Act 1977 concerning proceedings in public and the administration of an oath/affirmation. The offence of perjury is also provided for.

*Section 10* provides an amendment of section 9 of the Protection of Employees (Employers' Insolvency) Act 1984 concerning proceedings in public, anonymisation, and the administration of an oath/affirmation. The offence of perjury is also provided for. To align this Act with the WRC Act, a regulation making power has been inserted empowering the Minister to make provision in relation to any matter relating to the presentation of, the referral of, or the hearing of a complaint under section 9 of the 1984 Act that he or she considers appropriate.

*Section 11* provides for amendment of section 79 of the Employment Equality Act 1998 concerning proceedings in public and the administration of an oath/affirmation. The offence of perjury is also provided for.

*Section 12* provides for amendment of section 25 of the Equal Status Act 2000 concerning proceedings in public and the administration of an oath/affirmation. The offence of perjury is also provided for.

*Section 13* provides for statutory review of certain sections in this Bill. The review is to take place no later than twelve months after this Bill has been commenced.

*Section 14* introduces a short title of the Bill and provides for commencement.

*An Roinn Fiontar, Trádála agus Fostaíochta,  
Meitheamh, 2021.*