



**Pre-legislative scrutiny of the Plan of Action on Collective Redundancies following
Insolvency Bill 2023**

Opening Statement

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31 May 2023

I thank the Chair and the Committee for the opportunity to discuss the General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 which is included as a legislative priority for drafting on the Government’s Legislation Programme for the summer session.

The General Scheme amends in an integrated manner employment, redundancy and company laws. As a shared project across the Department, I am accompanied today by my Departmental colleagues Dara Breathnach and Peter O’Brien Hogan in respect of amendments to the collective redundancy rules and Áine Maher and Shane Smith regarding the statutory establishment of the Employment Law Review Group. The Scheme also provides for discrete but important amendments to the Companies Act that are material to the protection of workers as creditors and to that end I am myself accompanied by my colleague Sarah Flood.

We welcome the opportunity to contribute to the Committee’s scrutiny of the Scheme and to assist in any way we can.

The context for this General Scheme is the *Plan of Action on Collective Redundancies following Insolvency* which was launched in June 2021 following extensive and constructive engagement with the social partners. The Plan, which was welcomed by the social partners, was also informed by the work of the Company Law Review Group, a statutory advisory body made up of representatives from a wide range of stakeholders including those from the trade unions, business associations, government bodies, auditing and banking bodies, as well as academics, legal practitioners, and insolvency experts. Further consultations also took place during the development of the Scheme with Restructuring and Insolvency Ireland, the insolvency practitioners’ representative group, and the Department of Social Protection.

The Plan of Action addresses matters relating to employment rights and company law. It is not in response to any one previous company insolvency resulting in collective redundancies. Rather, it addresses the issues arising across the generality of such situations and seeks to further supplement the already robust legislative protections and safeguards afforded to the employees involved.

Significant progress has already been achieved in delivering on the various actions under the Plan of Action.

In 2021, a guidance document to help workers and their representatives navigate the existing legal frameworks was published.

Also that year, improvements were made to the quality and circulation of information to workers as creditors with amendments to the Companies Act made by the Companies (Rescue Process for Small and Micro Companies) Act 2021.

Last year the obligations on directors to consider the interests of creditors in the period leading up to insolvency was put on a statutory footing.

Work has already commenced on establishing the Employment Law Review Group on a non-statutory basis.

This General Scheme is a key step in implementing the outstanding employment rights and company related legislative commitments set out in the Plan of Action.

Overview

The policy objective of this Scheme is to further enhance the protection of employees in a collective redundancy in a way that does not unduly impede enterprises in the conduct of their business.

It is primarily focused on improving awareness and increasing transparency for the employees of insolvent employers.

The Scheme is comprised of 22 Heads, divided into four Parts. I will now provide a brief summary of its main aspects.

The Scheme will amend the Protection of Employment Act 1977 which governs redundancy rules to further protect employees as workers affected by collective redundancies. The Scheme ensures that all collective redundancies are subject to a 30-day notification period before they take effect, including where the employer is insolvent. Where the employer makes them redundant before the 30-day notification period finishes the employees can

seek redress from the Workplace Relations Commission. The Scheme also provides that where a liquidator is managing the collective redundancy process in an insolvency situation, they have similar obligations and where they fail to comply with those duties the WRC may prosecute them. Finally in respect of proposed collective redundancies, the Scheme allows for notification to the Minister by electronic means.

The Scheme also provides for the establishment of the Employment Law Review Group on a statutory basis. The ELRG will be a significantly valuable resource to the Department allowing for an ongoing assessment of employment and redundancy law to ensure it is fit for purpose. It will comprise of members with expertise and an interest in the development of employment and redundancy law. This will include members from the legal, accountancy and insolvency professions; worker and employer representatives and regulators; as well as Ministerial nominees.

In respect of corporate law, the Companies Act 2014 sets down a framework within which directors and companies are expected to operate. It provides for separate corporate legal personality and limited liability which is designed to encourage and foster enterprise by permitting individuals to engage in entrepreneurial activity while limiting personal exposure to financial loss in the event of commercial failure. However, the Companies Act demands that, in return for the privilege of limited liability, directors act in good faith and abide by the requirements of governance, transparency and commercial probity.

In the event of non-compliance, remedies and accountability are important. The 2014 Act has several provisions that can be utilised by creditors to set aside transactions which have been entered by companies and which have the effect of transferring assets or giving an advantage to certain creditors. The Scheme, which includes those amendments sought by ICTU and recommended by the CLRG, intends to enhance access to these remedies: it raises the bar for the permissibility of transferring assets in the period prior to insolvency and lowers the threshold required by the court to order a related company contribute to the debts of the company being wound up.

Finally, the Scheme will amend the 2014 Act allowing workers as creditors to have greater access to information regarding liquidations. These amendments are reflective not just of the CLRG's March 2021 report on the provision of information to workers as creditors but also ICTU's minority report.

Given the cumulative economic impacts of Covid-19, Brexit and the invasion of Ukraine on the liquidity of companies, it is reasonable to anticipate an increase in winding up petitions.

The General Scheme seeks to mitigate this with a view to enhancing the protection of employees that is already a feature of the existing legal landscape.

My colleagues and I are happy to discuss the Scheme in more detail with the Committee.

Thank you Chair.