



**An Bille Fostaíochta (Comhiomarcaíochtaí agus
Forálacha Ilghnéitheacha) agus Cuideachtaí (Leasú),
2023**

**Employment (Collective Redundancies and
Miscellaneous Provisions) and Companies (Amendment)
Bill 2023**

*Meabhrán Míniúcháin
Explanatory Memorandum*



**AN BILLE FOSTAÍOCHTA (COMHIOMARCAÍOCHTAÍ AGUS
FORÁLACHA ILGHNÉITHEACHA) AGUS CUIDEACHTAÍ
(LEASÚ), 2023**

**EMPLOYMENT (COLLECTIVE REDUNDANCIES AND
MISCELLANEOUS PROVISIONS) AND COMPANIES
(AMENDMENT) BILL 2023**

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023 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 amends the Protection of Employment Act 1977 as amended, which governs collective redundancy rules; provides for the establishment of a statutory Employment Law Review Group (ELRG) which will allow for an ongoing assessment of employment and redundancy law to ensure it is fit for purpose; and amends the Companies Act 2014 as amended to further improve the quality and circulation of information to workers as creditors and ensure remedies for transactional avoidance are more accessible to creditors.

The expected costs and benefits of the Bill are set out in the accompanying Regulatory Impact Assessment.

The Bill consists of four Parts as follows:

Part 1 – Preliminary and General

Part 2 – Amendments to Protection of Employment Act 1977

Part 3 – Establishment of Employment Law Review Group

Part 4 – Amendments to Companies Act 2014

Set out below is a summary of the main provisions in each Part of the Bill.

PART 1

Preliminary and General

Sections 1 - 2 of the Bill provide for preliminary and general provisions setting out the short title of the Bill and commencement. These sections also provide necessary definitions.

PART 2

Amendments to Protection of Employment Act 1977

Section 3 defines “Act of 1977”, which means the Protection of Employment Act 1977.

Section 4 provides for a definition of “responsible person” to whom certain obligations under the 1977 Act apply, where an employer is insolvent. This includes a liquidator, a provisional liquidator, a receiver or any other person appointed by the court where they assume full control of the business.

Section 5 provides for the amendment of section 9 of the 1977 Act to require a responsible person to engage in a consultation period with employees’ representatives when collective redundancies are proposed. It also provides that a responsible person may continue a consultation already commenced by the employer.

Section 6 provides for the amendment of section 10 of the 1977 Act to require a responsible person to provide certain information to employees’ representatives during the consultation.

Section 7 provides for the amendment of section 11 of the 1977 Act to make it an offence for a responsible person to fail to comply with sections 9 or 10 of the 1977 Act. A class A fine is applicable on summary conviction. The section also provides certain defences for a responsible person.

Section 8 provides for the amendment of section 11A of the 1977 Act to expand the grounds on which an employee can make a complaint to the Workplace Relations Commission to include where the employee is dismissed prior to the expiry of the 30-day period following notification to the Minister.

Section 9 provides for the amendment of section 12 of the 1977 Act to require a responsible person to notify the Minister of proposed collective redundancies. It also sets out the type of information the Minister may require to be included in a collective redundancy notification.

Section 10 provides for the amendment of section 13 of the 1977 Act to make it an offence for a responsible person to fail to notify the Minister of proposed collective redundancies. A class A fine is applicable on summary conviction. The section also provides for certain defences for a responsible person.

Section 11 provides for the amendment of section 14 of the 1977 Act. This amendment states that an employer or a responsible person shall not effect a collective redundancy until at least 30 days after the Minister is notified, including in cases of collective redundancies arising due to the employer’s insolvency.

Section 12 provides for the amendment of section 20 of the 1977 Act by updating the methods by which a collective redundancy notice may be sent to the Minister to include electronic means.

PART 3

Establishment of Employment Law Review Group

Section 13 provides for the establishment of a statutory Employment Law Review Group.

Section 14 sets out the functions of the Review Group. The functions are to monitor, review, and advise the Minister in accordance with the

programme of work determined by the Minister under *section 16*, with a specific focus on the implementation, amendment and consolidation of employment enactments; new legislative proposals relating to the employment of persons and redundancy; the Rules of the Superior Courts and judgments of courts which relate to the operation of employment enactments; EU developments in so far as they may affect the operation of employment enactments; international developments that may lead to improved practices; emerging trends in the workplace or changes to the way employment and redundancy matters operate; and other related matters or issues. “Employment enactment” has the same meaning as it has in the Workplace Relations Act 2015.

Section 15 deals with membership of the ELRG.

Section 16 concerns meetings and business of the ELRG. It provides that the Minister shall, at least once in every two years, after consultation with the ELRG, determine the programme of work to be undertaken by the Review Group.

Section 17 concerns the annual report of the ELRG and the provision of information to the Minister. It states that no later than three months after the end of each calendar year, the ELRG shall make a report to the Minister on its activities during the year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of two months from the receipt of the report.

Section 18 allows for expenses incurred by the Minister in the administration of Part 3 to be paid out of monies provided by the Oireachtas.

PART 4

Amendments to Companies Act 2014

Section 19 defines “Act of 2014” which means the Companies Act 2014.

Section 20 provides for an amendment to section 571 of the 2014 Act to oblige directors to notify employees and employees’ representatives of the winding up petition at the time it is presented to court or as soon as possible thereafter, when it is presented either by the company itself or with any of the other parties under subsection (1).

Section 21 provides for an amendment to section 572 of the 2014 Act to provide that the court can have regard to whether the directors of the company concerned have met their legal obligations under section 571 to inform its employees and employees’ representatives of the petition.

Section 22 provides for an amendment to section 573 of the 2014 Act to provide that the court direct the appointed provisional liquidator to inform employees and employees’ representatives of their appointment, explain the process and invite them to provide information they have and which they deem would provide a complete overview of the company’s affairs.

Section 23 provides for an amendment to section 594 of the 2014 Act to oblige the liquidator, within seven days of being served the Statement of Affairs, to issue a notice to the employees and employees’ representatives of the company concerned advising them of this fact. The liquidator is obliged make this Statement available to those employees and employees’ representatives who indicate an interest in seeking a copy within seven days.

Section 24 provides for an amendment to section 599 of the 2014 Act to modify the attribution test providing for a less restrictive provision stating that the court can have regard to the extent to which the circumstances that gave rise to the winding up are attributable to the acts or omissions of the related company; and allow the court to have regard to any other factor it considers fit in exercising its discretion to make a contribution order.

Section 25 provides for an amendment to section 604 of the 2014 Act to increase the time periods set out in subsections (2) and (4) within which the court may make an order, where it is satisfied that it would be just and equitable to do so based on the circumstances surrounding the transaction.

Section 26 provides for an amendment to section 608 of the 2014 Act to ensure that payments made in the ordinary course of business are not captured by the provision which deals with the power of the court to order the return of assets which have been improperly transferred.

Section 27 provides for an amendment to section 610 of the 2014 Act to make the test for reckless trading an objective one in subsection (1); give discretion to the courts to consider the facts of a particular case in subsection (3); and provide that the relief in subsection (8) may be granted only where a director took steps to minimise the loss to creditors.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Deireadh Fómhair, 2023.*

