



**AN BILLE UM CHOMHLÍONADH AN DLÍ FOSTAÍOCHTA
2008
EMPLOYMENT LAW COMPLIANCE BILL 2008**

*Mar a tionscnaíodh
As initiated*

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Data Protection Act 1988	1988, No. 25
Employees (Provision of Information and Consultation) Act 2006	2006, No. 9
Employment Agency Act 1971	1971, No. 27
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National Minimum Wage Act 2000	2000, No. 5
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Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29
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AN BILLE UM CHOMHLÍONADH AN DLÍ FOSTAÍOCHTA
2008

EMPLOYMENT LAW COMPLIANCE BILL 2008

BILL

5

entitled

AN ACT TO SECURE IMPROVED COMPLIANCE WITH
EMPLOYMENT LEGISLATION; TO ESTABLISH A BODY
TO BE KNOWN AS AN tÚDARÁS NÁISIÚNTA UM
10 CHEARTA FOSTAÍOCHTA OR, IN THE ENGLISH LAN-
GUAGE, AS THE NATIONAL EMPLOYMENT RIGHTS
AUTHORITY; TO ESTABLISH THE OFFICE OF STIÚR-
THÓIR AN ÚDARÁIS NÁISIÚNTA UM CHEARTA FOS-
15 TAÍOCHTA OR, IN THE ENGLISH LANGUAGE, THE
DIRECTOR OF THE NATIONAL EMPLOYMENT
RIGHTS AUTHORITY AND TO PROVIDE FOR HIS OR
HER APPOINTMENT; TO PROVIDE FOR THE TERMS,
CONDITIONS AND FUNCTIONS OF THE DIRECTOR; TO
20 PROVIDE FOR AN ACTING DIRECTOR TO PERFORM
THE FUNCTIONS OF THE DIRECTOR DURING EXIG-
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AND TO DEFINE ITS FUNCTIONS; TO FURTHER
PROVIDE FOR THE ENFORCEMENT OF EMPLOYMENT
LEGISLATION INCLUDING BY THE APPOINTMENT OF
25 AUTHORISED OFFICERS; TO INCREASE THE PENAL-
TIES FOR CERTAIN OFFENCES UNDER EMPLOYMENT
LEGISLATION AND CERTAIN OTHER ENACTMENTS;
TO FURTHER AMEND EMPLOYMENT LEGISLATION
AND CERTAIN OTHER ENACTMENTS AND TO
PROVIDE FOR RELATED MATTERS.

30 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Employment Law Com- Short title and
pliance Act 2008. collective citation.

35 (2) The Acts specified in *Part 1* of *Schedule 1* and this Act may
be cited together as the Employment Legislation Acts 1946 to 2008.

Commencement.	2. —This Act shall come into operation one month after the date of its passing.	
Interpretation.	3. —In this Act—	
	“acting Director” means a person appointed under <i>section 13</i> as the acting Director of the National Employment Rights Authority;	5
	“advisory board” means an advisory board established under <i>section 19</i> ;	
	“authorised officer” means an officer of the Director authorised by the Director under <i>section 35</i> ;	
	“automated data” means information that—	10
	(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose, or	
	(b) is recorded with the intention that it should be processed by means of such equipment;	15
	“code of practice” means a code of practice prepared and published under <i>section 53</i> ;	
	“contract of employment” means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;	20
	“data” means automated data and manual data;	
	“Director” means the Director of the National Employment Rights Authority appointed under <i>section 8</i> and includes an acting Director while so acting and, in relation to a particular power of the Director, a delegate to whom the power is delegated under <i>section 15</i> ;	25
	“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;	30
	“employer”, in relation to an employee—	
	(a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment,	35
	(b) includes a person (other than an employee of that person) under whose control and direction an employee works, and	
	(c) includes, where appropriate, the successor of the employer or an associated employer of the employer;	40
	“employment legislation” means—	
	(a) the Acts specified in <i>Part 1</i> of <i>Schedule 1</i> and any instruments made under those Acts for the time being in force,	
	(b) the statutory instruments specified in <i>Part 2</i> of <i>Schedule 1</i> , and	45

(c) employment regulation orders and registered employment agreements within the meaning of the Industrial Relations Acts 1946 to 2004;

5 “local authority” has the meaning given to it by the Local Government Act 2001;

“manual data” means information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;

10 “Minister” means the Minister for Enterprise, Trade and Employment;

“officer of the Director” means—

(a) an officer of the Minister assigned to the Director,

(b) a member of the Garda Síochána seconded to the Director, or

15 (c) a person employed by the Minister or the Director under a contract for service or otherwise,

to assist the Director in performing his or her functions;

“official agency” has the meaning given to it by *section 27*;

“prescribed” means prescribed by regulations made by the Minister;

20 “processing”, of or in relation to information or data, means performing any operation or set of operations on the information or data, whether or not by automatic means, including—

(a) obtaining, recording or keeping the information or data,

25 (b) collecting, organising, storing, altering or adapting the information or data,

(c) retrieving, consulting or using the information or data,

(d) disclosing the information or data by transmitting, disseminating or otherwise making it available, or

30 (e) aligning, combining, blocking, erasing or destroying the information or data;

35 “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

40 4.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed. Regulations.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it has been made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 5

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 10

PART 2

NATIONAL EMPLOYMENT RIGHTS AUTHORITY

Establishment of National Employment Rights Authority.

6.—(1) There is established by this section a body called “Údarás Náisiúnta um Chearta Fostaíochta” or, in the English language, “National Employment Rights Authority”. 15

(2) The objective of the National Employment Rights Authority shall be to promote, encourage and secure compliance with employment legislation.

Establishment of office of Director of National Employment Rights Authority.

7.—(1) The office of Stiúirthóir an Údaráis Náisiúnta um Chearta Fostaíochta or, in the English language, the Director of the National Employment Rights Authority, is hereby established. 20

(2) The office of the Director of the National Employment Rights Authority shall be a constituent part of the National Employment Rights Authority.

Director of National Employment Rights Authority.

8.—(1) Subject to *subsection (2)*, the Minister shall, in writing, appoint a person to be the Director of the National Employment Rights Authority (referred to in this Act as “the Director”) to perform the functions conferred on the Director by this Act. 25

(2) The person who, immediately before the commencement of this Act, holds the office of Director on an interim basis, shall, on the commencement of this Act, be appointed under *subsection (1)* as the first Director for the purposes of this Act. 30

(3) Notwithstanding *subsection (1)*, the Minister shall not appoint a person to be the Director unless the Public Appointments Service, after holding a competition on behalf of the Minister, selected the person for appointment and advised the Minister accordingly. 35

(4) The Director shall be a corporation sole and, notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and shall be capable in his or her corporate name of holding and disposing of real or personal property for the purpose of the office and of suing and being sued. 40

(5) The Director shall perform the functions conferred on him or her, by or under this or any other enactment, subject to any policy direction that the Minister may give to the Director in writing, from time to time, under *section 16*, and shall be assisted in the performance of those functions by the officers of the Director. 45

(6) Judicial notice shall be taken of the signature of the Director on or affixed to any document purporting to be a document made by the Director and it shall be presumed, unless the contrary is shown, that the signature has been duly signed or affixed.

5 **9.**—(1) Subject to *subsections (2) and (4)*, the Director shall hold office under a written contract of service (which contract may be renewed) for such period, not exceeding 5 years, as is specified in the contract, beginning on the date of his or her appointment, subject to such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as are so specified, being terms and conditions which are determined from time to time by the Minister, with the consent of the Minister for Finance.

Terms and conditions of appointment of Director.

15 (2) The term of office of the first Director appointed under *section 8(2)* begins on the date of his or her appointment as Director on an interim basis for the period specified in that appointment.

(3) The Director shall not hold any other office or employment in respect of which emoluments are payable.

(4) A person shall not serve more than 10 years as the Director.

20 (5) (a) Subject to *paragraph (b)*, a person who was the Director shall not, for a period of 12 months following his or her resignation, removal or retirement from office—

(i) hold any office or employment, or

(ii) act as a consultant,

25 outside the public service, where he or she is likely to use or disclose information acquired by him or her in the performance of his or her functions as Director.

30 (b) If any question arises as to whether or not a conflict of interest might arise if the person held any office or employment or acted as a consultant outside the public service within the period of 12 months referred to, the person shall refer the question to the Minister for decision whose decision shall be final.

35 **10.**—(1) The Minister may, with the consent of the Minister for Finance, if he or she considers it appropriate to do so, make and carry out a scheme or schemes for the granting of superannuation benefits to or in respect of one or more of the following, namely, the Director, the acting Director and any officer of the Director.

Superannuation.

40 (2) A superannuation scheme shall fix the time and conditions of retirement for the person or persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of such person.

45 (3) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a superannuation scheme and shall carry out such a scheme in accordance with its terms.

(4) Superannuation benefits shall not be granted by the Minister to or in respect of the Director, the acting Director or an officer of the Director except in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction. 5

(5) A superannuation scheme shall provide for an appeal from a decision relating to superannuation benefits payable under the scheme.

(6) The Minister shall cause a superannuation scheme to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 10
15

(7) In this section—

“superannuation benefits” means pensions, gratuities and other allowances payable on or in respect of resignation, retirement or death;

“superannuation scheme” means a superannuation scheme made under *subsection (1) or (3)*. 20

Resignation,
suspension, removal
and disqualification
of Director.

11.—(1) The Director may resign by giving notice in writing to the Minister of his or her intention to resign and any such resignation shall take effect as of the date upon which the Minister shall have received notice of the resignation. 25

(2) The Minister may at any time suspend or remove the Director from office if the Minister is satisfied that—

(a) the Director has become incapable through ill-health of effectively performing his or her functions, or

(b) the Director has committed stated misbehaviour, or 30

(c) the suspension or removal appears to be necessary for the effective performance of the functions of the Director.

(3) If the Director is suspended or removed from office under *subsection (2)*, the Minister shall provide to the Director a statement of the reason or reasons for the suspension or removal. 35

(4) A person shall be disqualified from holding and shall cease to hold office as the Director if he or she—

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with his or her creditors, 40

(c) is convicted of an indictable offence in relation to a company,

(d) is convicted of an offence involving fraud or dishonesty, whether or not in connection with a company,

(e) is sentenced by a court of competent jurisdiction to a term of imprisonment,

(f) is the subject of an order under section 160 of the Companies Act 1990, or

5 (g) ceases to be ordinarily resident in the State.

12.—(1) A person who is for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(b) a member of the European Parliament, or

10 (c) entitled under the standing orders of a local authority to sit as a member thereof,

Membership of either House of the Oireachtas, European Parliament or local authority.

is, while he or she is so entitled or is such a member, disqualified from becoming the Director.

(2) Where the Director is—

15 (a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

20 (c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament, or

(d) elected or co-opted as a member of a local authority,

he or she shall thereon cease to be the Director.

25 13.—(1) Subject to *subsection (2)*, the Minister may appoint, in writing, subject to such terms and conditions as are determined by the Minister from time to time in consultation with the Minister for Finance, a person, who shall be known, and is referred to in this Act, as the acting Director, to perform the functions of the Director—

(a) in the event of the incapacity through illness, or absence otherwise, of the Director, or

30 (b) while the Director is suspended from office, or

(c) during a vacancy in the office of Director.

(2) No acting Director shall be appointed to hold office for a continuous period of more than 12 months.

35 (3) The Minister may, at any time, terminate an appointment under this section and shall terminate the appointment upon being satisfied that—

(a) the incapacity of the Director has ceased, or

(b) his or her suspension from office has ceased and he or she has resumed the performance of his or her functions, or

(c) the vacancy in the office of Director has been filled.

Functions of
Director.

14.—(1) The objective of the National Employment Rights Authority specified in *section 6* shall be achieved through the performance by the Director of the following functions conferred on the Director by this Act—

5

- (a) to enforce employment legislation, including by the inspection and examination of employment records, the carrying out of investigations and the monitoring of compliance with the requirements of employment legislation and the prosecution of offences by way of summary proceedings, 10
- (b) to investigate instances of suspected offences under employment legislation,
- (c) at his or her discretion, to refer cases to the Director of Public Prosecutions where the Director of the National Employment Rights Authority has reasonable grounds for believing that an indictable offence under employment legislation has been committed. 15

(2) Without prejudice to the generality of *subsection (1)*, in performing his or her functions under employment legislation, the Director— 20

- (a) for the purpose of informing and advising employers and employees of their rights and obligations under, and the application and enforcement of, employment legislation, shall promote awareness and conduct information campaigns, 25
- (b) may make arrangements with certain specified bodies and official agencies for the disclosure of certain information in accordance with *section 27*,
- (c) may enter into cooperation agreements with official agencies for the purposes of *section 28*, 30
- (d) may, and if so requested by the Minister shall, prepare and publish codes of practice in accordance with *section 53*,
- (e) may, and if so requested by the Minister shall, advise the Minister in relation to the application and enforcement of employment legislation and in relation to any proposals for amendments to employment legislation, 35
- (f) shall keep the Minister informed of the following—
 - (i) matters relating to significant developments concerning the application and enforcement of employment legislation, 40
 - (ii) matters relevant to the accountability of the Minister to the Houses of the Oireachtas regarding the application and enforcement of employment legislation, and 45
 - (iii) any other matters relating to the enforcement and application of employment legislation that, in the

Director's opinion, should be brought to the attention of the Minister,

5 (g) shall represent or assist in the representation of the State at national and international level and in such manner, as may be directed by the Minister, in matters relating to the application and enforcement of employment legislation.

(3) The Director shall have all such powers as are necessary or expedient for the performance of his or her functions.

10 (4) (a) Notwithstanding that he or she has been so seconded but without prejudice to *subsections (5) and (6)*, a member of the Garda Síochána seconded to the office of the Director shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

15 (b) A member of the Garda Síochána so seconded shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána for purposes other than the purposes of this Act, as well as for the purposes of this Act.

20 (5) Subject to this Act, the Director shall be independent in the performance of his or her functions.

(6) The Director may perform such of his or her functions as he or she thinks fit through or by an officer of the Director and in the performance of those functions the officer shall be subject to the directions of the Director only.

25 (7) (a) The Director may, as he or she sees fit, publish reports on any inspections, examinations, or investigations (other than investigations under *section 41*) carried out by him or her or on his or her behalf under this Act.

30 (b) Where the statements in a report by the Director are made without malice, the subsequent publication of the report is privileged for the purposes of the law of defamation.

35 **15.—(1)** Without prejudice to the generality of *section 14(6)* the Director may, in writing, delegate to an officer of the Director any of the Director's functions under employment legislation, other than the power to delegate under this section. Delegation of functions of Director.

(2) A function delegated under *subsection (1)* shall not be exercised by the delegate except in accordance with the instrument of delegation and the delegate shall perform the function under the general direction and subject to the general control of the Director.

40 (3) A delegate shall, on request by a person affected by the exercise of a function delegated to him or her, produce the instrument of delegation under this section, or a copy of the instrument, for inspection.

45 (4) A delegation under this section may be revoked at any time by the Director and does not prevent the exercise by the Director of a function so delegated.

(5) Where a delegation of a function is revoked at a time when the function has not been fully performed, the Director or another

officer of the Director to whom a delegation in respect of that function has been made under this section may continue the performance of the function.

Ministerial policy directions.

16.—(1) The Minister may, as he or she considers appropriate, give general policy directions in writing to the Director in relation to the performance by the Director of his or her functions, and the Director shall comply with any such directions. 5

(2) Without prejudice to *section 41, subsection (1)* shall not be construed as enabling the Minister to exercise any power or control in relation to any particular case or group of cases with which the Director is or may be concerned. 10

Obligation to consult with Director.

17.—The Minister shall consult with the Director in relation to any proposal for legislation, by the Minister or any other Minister of the Government, pursuant to which it is proposed to confer further functions on the Director. 15

Power to engage consultants and advisers.

18.—(1) The Director may, from time to time, as he or she considers necessary or expedient for the performance of his or her functions, engage consultants and advisers.

(2) Any fees payable by the Director to a consultant or adviser engaged under this section shall be paid by the Director out of moneys at his or her disposal and he or she shall have regard to guidelines issued from time to time by the Minister for Finance. 20

(3) The Director shall comply with any directions with regard to consultants or advisers engaged under this section that the Minister may give to him or her with the consent of the Minister for Finance. 25

Establishment and functions of advisory board.

19.—(1) The Minister shall, for the purposes of enabling representatives of employers and employees to advise the Director on matters relating to compliance with and enforcement of employment legislation, establish an advisory board and appoint the members of it.

(2) The advisory board shall advise the Director— 30

(a) on issues relating to compliance with and enforcement of employment legislation,

(b) as to the provisions of the strategy statement of the Director under *section 23* and the work programme of the Director under *section 24*, 35

(c) on the provision of information relating to compliance with and enforcement of employment legislation,

(d) on the delivery of a high standard of customer service by the Director, and

(e) regarding proposals for research, surveys and studies. 40

(3) The Director may consult with or seek the advice of the advisory board on any matters arising in relation to the functions of the Director.

(4) Where the advice of the advisory board is sought by the Director under *subsection (3)*, the Director shall not be required to await receipt of the advice before performing any function, once a reasonable period to facilitate the giving of the advice has passed.

5 (5) The Director may consider the advice of the advisory board given under this section but shall not be bound to act on it.

(6) The advisory board shall have no function in relation to individual cases or groups of cases with which the Director is or may be concerned.

10 **20.—(1)** The advisory board shall consist of 10 members comprising—

Membership of advisory board and terms and conditions of membership.

(a) 3 persons nominated by such organisations representative of employers as the Minister considers appropriate,

15 (b) 3 persons nominated by such organisations representative of employees as the Minister considers appropriate,

(c) 3 other persons who, in the Minister's opinion, have expertise or experience in relation to employment legislation or other matters relating to employment, as the Minister considers appropriate, and

20 (d) a chairperson who is independent of the representative organisations referred to in *paragraphs (a) and (b)*.

(2) The Minister in appointing members of the advisory board, shall, in so far as it is practicable and having regard to the relevant experience of the person concerned, ensure an equitable balance
25 between men and women in the composition of the advisory board.

(3) Subject to *subsection (4)*, the term of office of members of the advisory board shall be as follows:

30 (a) not more than 5 years from the date of his or her appointment in the case of the chairperson who may be reappointed for a further term or terms not exceeding 5 years in total;

35 (b) not more than 4 years from the date of his or her appointment in the case of each of the persons referred to in *subsection (1)(a) and (b)*, each of whom may be reappointed for a further term or terms not exceeding 4 years in total;

40 (c) not more than 3 years from the date of his or her appointment in the case of each of the persons referred to in *subsection (1)(c)*, each of whom may be reappointed for a further term not exceeding 3 years.

(4) The persons who are first appointed to the advisory board shall hold office as follows:

(a) in the case of the persons referred to in *subsection (1)(a)*—

45 (i) one person shall hold office for not more than 2 years, and

(ii) one person shall hold office for not more than 3 years,

from the date of his or her appointment;

(b) in the case of the persons referred to in *subsection (1)(b)*—

(i) one person shall hold office for not more than 2 years, and

(ii) one person shall hold office for not more than 3 years, 5

from the date of his or her appointment.

(5) The members of the advisory board who are to hold office for the terms specified in *subsection (4)* shall be decided by lot to be drawn in the manner that may be decided by the Minister.

(6) A member of the advisory board shall hold office on such 10 other terms and conditions as the Minister may determine.

(7) The Minister may at any time remove a member of the advisory board from office if, in the opinion of the Minister—

(a) the member has become incapable through ill-health of effectively performing the duties of the office, 15

(b) the member has committed stated misbehaviour,

(c) in the case of a person appointed under *subsection (1)(a)* or *(b)*, the member is no longer a representative of employers or employees, as the case may be, or

(d) the removal of the member appears to the Minister to be 20 necessary for the effective performance by the advisory board of its functions.

(8) A member may at any time resign from office by written notice given to the Minister and the resignation shall take effect on the date specified in the notice or on the date on which the Minister 25 receives the notice whichever is the later.

(9) The advisory board may act notwithstanding a vacancy or vacancies in its membership.

(10) If a member of the advisory board dies, becomes disqualified for, resigns or is removed from office, the Minister may appoint a 30 person to be a member of the advisory board to fill the resultant casual vacancy and the person so appointed shall be appointed in the same manner as the member who occasioned the casual vacancy.

(11) A person appointed to be a member of the advisory board under *subsection (10)* shall hold office for the remainder of the term 35 of office of the person who occasioned the casual vacancy.

(12) Subject to this Act, the advisory board shall regulate, by standing orders or otherwise, its procedure and business.

(13) Members of the advisory board shall be paid by the Minister such allowances for expenses as the Minister, with the consent of the 40 Minister for Finance, may from time to time determine.

(14) The Director shall provide all reasonable facilities and services as may be required by the advisory board for the performance of its functions.

21.—(1) The chairperson of the advisory board shall chair its meetings. Chairperson of advisory board.

5 (2) In the event of the chairperson being unable to attend a meeting of the advisory board, the members who are present shall choose one of their number to chair the meeting.

(3) In the event of the office of chairperson being vacant, the Minister shall designate one of the members of the advisory board to chair its meetings until a chairperson is appointed.

10 22.—(1) The chairperson of the advisory board shall, not later than 3 months after the end of each year, present a report in writing to the Minister and to the Director of its activities during that year (in this section referred to as an “annual report”) and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas within 2 months after receipt of the report. Annual report and information to the Minister.

15 (2) The first annual report shall be in respect of the period beginning on the commencement of this Act and ending on the following 31 December.

20 (3) The annual report shall include information in such form and about such matters relating to the functions of the advisory board as the Minister may direct.

25 23.—(1) Not later than 6 months after the commencement of this Act and thereafter at least 3 months before each third anniversary of the date on which the preceding strategy statement was submitted under this section, the Director shall, following consultation with the advisory board, prepare and submit to the Minister for approval, with or without amendment, a strategy statement for the following 3 year period. Strategy statement.

(2) A strategy statement shall—

30 (a) specify the key objectives, outputs and related strategies (including the use of resources) of the Director,

(b) have regard to the need to ensure the most beneficial, effective and efficient use of the Director’s resources,

35 (c) except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,

(d) specify the manner in which the Director proposes to assess performance in respect of the objectives referred to in *paragraph (a)*, taking account of relevant performance indicators (financial and non-financial),

40 (e) be prepared in the form and manner that the Minister may from time to time direct, and

(f) include any other matters that the Minister may from time to time direct.

45 (3) When preparing the strategy statement, the Director may consult such other persons or bodies of persons that the Director considers appropriate.

(4) A strategy statement is deemed to be adopted when it is approved by the Minister.

(5) As soon as practicable after a strategy statement has been approved, the Minister shall cause a copy of the strategy statement to be laid before each House of the Oireachtas and the strategy statement shall be published in the form and manner that the Director considers appropriate. 5

Work programme.

24.—(1) The Director shall, following consultation with the advisory board, prepare and submit to the Minister for his or her approval with or without amendment, at least 2 months before the beginning of each year, a work programme relating to the performance of the functions of the Director, including— 10

(a) having regard to the strategy statement, the objectives of the Director for that year and the strategy of the Director for achieving those objectives, 15

(b) the priorities of the Director for that year, having regard to those objectives and resources available to the Director, and

(c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under *subsection (2)*. 20

(2) The Minister may, from time to time, issue directions or guidelines to the Director concerning the preparation of the work programme and the Director shall comply with those directions and prepare the work programme in accordance with those guidelines. 25

(3) A work programme (including any amended work programme) is deemed to be adopted when it is approved in writing by the Minister.

(4) Where, during the period covered by a work programme—

(a) the Minister issues policy directions to the Director under *section 16* which require amendment of the work programme, or 30

(b) the Director considers it necessary to amend the work programme for any other reason,

the Director shall, after consultation with the advisory board, submit an amended work programme to the Minister for approval, with or without amendment. 35

Accountability of Director before Oireachtas Committees.

25.—(1) The Director shall, whenever required to do so by—

(a) a committee appointed by either House of the Oireachtas, or 40

(b) a committee appointed jointly by both Houses of the Oireachtas,

the business of which committee includes examination of policy relating to employment legislation, attend before such committee to discuss his or her general activities. 45

(2) In the performance of his or her duties under *subsection (1)*, the Director shall not—

(a) provide information relating to specific investigations or prosecutions, under employment legislation, or

5 (b) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

10 **26.—(1)** Subject to *subsection (2)*, the Director shall, not later than 3 months after the end of each year, make a report in writing to the Minister (in this section referred to as the “annual report”) on his or her activities and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas within 2 months after receipt by him or her of the report. Director’s annual report.

15 (2) The first annual report shall be in respect of the period beginning on the commencement of this Act and ending on the following 31 December.

20 (3) An annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in *subsection (1)* or this subsection shall be construed as requiring the Director to include in such a report information the inclusion of which therein would, in the opinion of the Director, be likely to prejudice the performance by the Director of any of his or her functions.

(4) The Director—

25 (a) shall, as the Minister may from time to time require, and

(b) may, from time to time,

make such other reports to the Minister relating to his or her functions as the Minister may require or as the Director considers appropriate, as the case may be.

30 (5) In addition to the information provided by the Director in the annual report and in any other report made pursuant to *subsection (4)*, the Director shall provide the Minister with such information in relation to the performance of his or her functions, or with advice on any matter relating to those functions, or both, as the Minister may from time to time request.

27.—(1) This section is without prejudice to section 1093A of the Taxes Consolidation Act 1997 or section 261A of the Social Welfare Consolidation Act 2005 (both as inserted by the Social Welfare and Pensions Act 2007). Disclosure of certain information.

40 (2) Notwithstanding any other enactment, the Director may, in the performance of his or her functions, acquire, use and disclose to—

45 (a) a rights commissioner, the Labour Relations Commission, the Employment Appeals Tribunal or the Labour Court, or

(b) an official agency,

the following information—

- (i) the Personal Public Service Number of an employee,
- (ii) the Employer Registration Number of an employer,
- (iii) the particulars of a valid passport or other equivalent document issued by or on behalf of any authority recognised by the Government, which establishes a person's identity and nationality, and 5
- (iv) any unique identifier for a person in respect of his or her registration in any register established and maintained for the purposes of section 38 of the Immigration, Residence and Protection Bill 2008. 10

(3) The Director may, in the performance of his or her functions, disclose—

- (a) to an employee, the Employer Registration Number of the employer of the employee, 15
- (b) to an employer, the Personal Public Service Number of an employee of the employer.

(4) In this section and *section 28* “official agency” means—

- (a) the Minister,
- (b) the Minister for Justice, Equality and Law Reform, 20
- (c) the Minister for Transport,
- (d) the Minister for Social and Family Affairs,
- (e) the Garda Síochána,
- (f) the Revenue Commissioners,
- (g) the Director of Corporate Enforcement, 25
- (h) the Health and Safety Authority,
- (i) the Competition Authority,
- (j) the Private Security Authority,
- (k) the Pensions Board,
- (l) the Pensions Ombudsman, 30
- (m) the competent authority (within the meaning of *section 46*) or authorities of other states.

Cooperation
between Director
and official
agencies.

28.—(1) The Director shall, in so far as is consistent with the proper performance of his or her functions, endeavour to secure cooperation between the Director and official agencies, and for that purpose, as soon as practicable after the commencement of this Act, the Director may enter into one or more than one agreement (in this section referred to as a “cooperation agreement”) with official agencies for the purposes of— 35

(a) facilitating cooperation between the Director and the official agencies in the performance of their respective functions, in so far as they relate to the employment of persons, and

5 (b) avoiding duplication of activities by the Director and any of the official agencies.

(2) It shall not be necessary for the purposes of *subsection (1)* that the same official agencies be party to each cooperation agreement entered into with the Director pursuant to that subsection.

10 (3) A cooperation agreement shall include provisions—

(a) enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions,

15 (b) enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter,

20 (c) requiring each party to consult with any other party before performing any functions in circumstances where the respective exercise by each party of the functions concerned involves the determination of issues that are identical to one another or are within the same category of such an issue, being a category specified in the cooperation agreement, and

25 (d) ensuring that no person is the subject of proceedings (whether civil or criminal) under this Act or any other enactment in respect of an alleged contravention of a provision of this Act or any other enactment, by more than one of the parties.

30 (4) A cooperation agreement may be varied by the parties concerned.

(5) The Minister and any relevant Minister or Ministers of the Government in relation to the official agency concerned shall each
35 be furnished by the Director with a copy of every cooperation agreement (including any variation of the agreement) that has been made within 4 weeks after the agreement (or the variation of it) has been made.

40 (6) A cooperation agreement, or any variation made to it, shall be in writing.

(7) Without prejudice to *subsection (8)*, nothing in any enactment shall be read as preventing the provisions of a cooperation agreement from having effect in accordance with their terms.

45 (8) If information is furnished by one party to another party pursuant to a provision of a cooperation agreement of the kind referred to in *subsection (3)(a)*, the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.

(9) A cooperation agreement shall not operate to require the Director to provide information to any official agency if the disclosure of that information by the Director is prohibited by law.

(10) A failure by the Director or an official agency to comply with a provision of a cooperation agreement shall not invalidate the exercise by it of any power. 5

(11) In this section “party” means a party to a cooperation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the cooperation agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate. 10

Disclosure of information relating to offences.

29.—(1) Notwithstanding any other law, information that, in the opinion of an official agency may relate to the commission of an offence under employment legislation may be disclosed by the official agency to the Director or acting Director or an authorised officer or other officer of the Director. 15

(2) Notwithstanding *section 28*, information, which in the opinion of the Director may relate to the commission of an offence which is not an offence under employment legislation, may be disclosed by the Director to— 20

- (a) the Garda Síochána,
- (b) the Revenue Commissioners,
- (c) the Director of Corporate Enforcement,
- (d) the Competition Authority, or 25
- (e) any other person charged with the detection, investigation or prosecution of offences.

Prohibition on unauthorised disclosure of information.

30.—(1) A person shall not, unless duly authorised, or required by law, to do so, disclose confidential information obtained by him or her in his or her capacity as, or while performing duties as— 30

- (a) the Director,
 - (b) the acting Director,
 - (c) an officer of the Director,
 - (d) an authorised officer,
 - (e) a member of the advisory board, 35
 - (f) a consultant or adviser engaged by the Director under *section 18* or an employee of such a consultant or adviser, or
 - (g) a person engaged by the Director in any other capacity.
- (2) *Subsection (1)* shall not apply to— 40
- (a) a communication made by an authorised officer or other officer of the Director, in the performance of any of his

or her functions under employment legislation, being a communication the making of which was necessary for the performance by the authorised officer or other officer of any such function, or

5 (b) the disclosure by an authorised officer or other officer of the Director to any member of the Garda Síochána of information which, in the opinion of the authorised officer or other officer, may relate to the commission of an offence (whether or not an offence under employ-
10 ment legislation).

(3) A person who contravenes *subsection (1)* commits an offence.

(4) Nothing in *subsection (1)* shall prevent the disclosure of information by means of a report made—

15 (a) to the Director or the advisory board, as the case may be, or

(b) by or on behalf of the Director to the Minister or another Minister of the Government.

(5) A person who suffers loss or harm as a result of a contra-
20 vention of *subsection (1)* shall be entitled to bring proceedings against the person referred to in *subsection (6)* in any court of competent jurisdiction seeking one, or more than one as appropriate, of the following reliefs in respect of that loss or harm:

(a) relief by way of injunction or declaration;

(b) damages.

25 (6) The person mentioned in *subsection (5)* is—

(a) if the person who contravened *subsection (1)* is other than an authorised officer or other officer of the Director, that person,

30 (b) if the person who contravened *subsection (1)* is an authorised officer or other officer of the Director and the relief sought, or to the extent that the relief sought, in the proceedings is—

(i) relief referred to in *subsection (5)(a)*, that person,

(ii) relief referred to in *subsection (5)(b)*, the Director.

35 (7) An action under *subsection (5)* shall be regarded as an action founded on tort.

(8) In this section—

40 “confidential information” includes information that is expressed by the Director to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the Director or by some other person authorised in that behalf by the Director for the purposes of this section.

31.—(1) The Freedom of Information Act 1997 is amended—

(a) in section 46(1), by inserting the following after paragraph (ba):

“(bb) a record held or created by the Director of the National Employment Rights Authority appointed under section 8 of the *Employment Law Compliance Act 2008* or an officer of the Director (other than a record concerning the general administration of the office of the Director of the National Employment Rights Authority),”

and

(b) in the First Schedule, by inserting in paragraph 1(2)—

“the Office of the Director of the National Employment Rights Authority,”

(2) The Data Protection Act 1988 is amended in section 5(1) by inserting the following after paragraph (gg):

“(ggg) kept by the Director of the National Employment Rights Authority (appointed under section 8 of the *Employment Law Compliance Act 2008*) or an officer of the Director for the purposes of his or her functions under employment legislation (within the meaning of that Act),”

PART 3

COMPLIANCE 25

32.—(1) Subject to subsection (3), every employer shall display in a prominent position in or at the place of work concerned, being a place to which employees have access and in such a position that it may be easily read by employees, one or more than one notice in a form, manner and, as appropriate, language or more than one language that is reasonably likely to be understood by the employees concerned containing the information prescribed under subsection (2).

(2) Subject to prior consultation with the Director as to the information concerned, the Minister may prescribe the information to be contained in a notice for the purposes of this section, which information shall include the following—

(a) entitlements under employment legislation, either generally or by reference to particular enactments or a particular class or particular classes of enactments or to employees of one or more than one particular class or description, as may be specified in the notice concerned,

(b) complaints procedures concerning entitlements under employment legislation, and

(c) the contact details of the office of the Director for the purposes of—

(i) making general enquiries regarding entitlements under, and the application and enforcement of, employment legislation, and

5 (ii) communicating information to the Director pursuant to *section 50*.

(3) The Director or an officer of the Director may direct that a notice referred to in this section shall be displayed in a specified place or specified places in or at a place of work and the employer shall comply with the direction.

10 (4) An employer who—

(a) fails to display a notice or notices containing the prescribed information in accordance with this section, or

(b) fails to comply with a direction given under *subsection (3)*, or

15 (c) without lawful authority, alters, removes, damages or defaces a notice to which this section relates,

commits an offence.

20 (5) The Director shall cause the information prescribed under *subsection (2)* to be published on the website of the Director and shall make copies of the prescribed information available on application to the Director.

25 **33.—(1)** Employers and employees shall endeavour as far as possible to resolve at workplace level, in accordance with any arrangements in place for resolution of disputes or differences between them, any disputes or differences relating to the application of any employment legislation. General duty to resolve at workplace level disputes or differences.

30 (2) Employers and employees may, for the purposes of *subsection (1)*, request information relating to the application of employment legislation from the Director who shall, if so requested, endeavour to provide such information to the extent practicable in the circumstances (without prejudice to the bringing of proceedings for an offence under employment legislation).

PART 4

ENFORCEMENT

35 **34.—(1)** In this Part—

Interpretation
(Part 4).

“computer” includes any electronic device capable of performing logical or arithmetical operations on data in accordance with a set of instructions;

40 “computer at the place” includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer;

“document”, for the purposes of this Part, includes any linking document drawn-up in the making-up of any book or record (including

accounts) and showing details of the particulars on which that book or record was compiled;

“premises” means any place or vehicle;

“place” includes any land, building (or part of a building), dwelling and any other place whatsoever; 5

“records” includes, in addition to a record in writing—

(a) discs, tapes, soundtracks or other devices, including electronic devices, in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form, 10

(b) films, tapes or other devices, including electronic devices, in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and 15

(c) photographs,

and a reference to copies of records includes—

(i) in the case of records falling within *paragraph (a)* only, transcripts of the sounds or signals embodied in them,

(ii) in the case of records falling within *paragraph (b)* only, still reproductions of the images embodied in them, and 20

(iii) in the case of records falling within both *paragraphs (a)* and *(b)*, such transcripts together with such still reproductions;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes— 25

(a) part of a vehicle,

(b) an article designed as a vehicle but not capable of functioning as a vehicle, 30

(c) a skip or other container designed for use or used for carriage on a vehicle,

(d) a trailer designed for use or used with a vehicle.

(2) In this Part a reference to records includes a reference to statutory employment records within the meaning of *section 52(1)* and records to which *section 52(5)* applies. 35

Authorised officers.

35.—(1) The Director may appoint in writing such and so many of his or her officers to be authorised officers for the purposes of all or any of the provisions of employment legislation.

(2) An appointment under *subsection (1)* may be specified to be for a fixed period and may be renewed by the Director as he or she sees fit while the person continues to be an officer of the Director. 40

(3) A person appointed under *subsection (1)* shall, on appointment, be given a certificate of his or her appointment, issued by the Director.

5 (4) Every authorised officer (other than a member of the Garda
Síochána in uniform), when performing any function or exercising
any power in his or her capacity as an authorised officer, shall
produce the certificate of appointment issued under *subsection (3)*
or a copy of it if requested to do so by a person affected by the
10 performance of the function or the exercise of the power, as the case
may be.

(5) An appointment under this section as an authorised officer
ceases—

(a) if the Director revokes the appointment,

15 (b) if the appointment is for a fixed period, at the end of that
period, or

(c) if the person appointed ceases to be an officer of the
Director.

(6) A person commits an offence under this section if the
person—

20 (a) obstructs, impedes or assaults an authorised officer in the
exercise of a power conferred by this Part,

(b) without reasonable excuse, does not comply with a request
or requirement of, or refuses to answer a question asked
25 by, an authorised officer in the exercise of a power con-
ferred by this Part,

(c) in purported compliance with such request or requirement
or in answer to such question, gives information to the
authorised officer that the person knows to be false or
misleading in a material respect, or

30 (d) falsely represents himself or herself to be an authorised
officer.

(7) A statement or admission made by a person pursuant to a
requirement of an authorised officer under *section 36(2)* shall not be
admissible as evidence in proceedings brought against that person
35 for an offence (other than an offence under *subsection (6)*).

36.—(1) An authorised officer may, for the purposes of monitor-
ing and enforcing compliance with employment legislation and any
inspection, examination or investigation he or she requires to carry
out for those purposes—

Right of entry and
inspection,
examination and
investigation by
authorised officers.

40 (a) at all reasonable times enter any premises which the auth-
orised officer believes on reasonable grounds is being
used for, or in relation to, the employment of persons
and where the authorised officer believes on reasonable
grounds that such entry is necessary for the purpose of
45 inspecting the premises or any books, documents or other
records relating directly or indirectly to the employment
of persons,

- (b) search and inspect the premises and any books, documents or other records that are on, at or in that premises,
 - (c) secure for later inspection any premises or any part of any premises on, at or in which such books, documents or other records are kept or there are reasonable grounds for believing such books, documents or other records are kept, 5
 - (d) take copies of or extracts from any such books, documents or other records on, at or in the premises, including in the case of information in a non-legible form, copies of, or extracts from, such information in a legible form, 10
 - (e) remove and retain such books, documents or other records for such periods as may be reasonable for further examination, subject to a warrant being issued for that purpose by a judge of the District Court, and take any other steps which appear to the authorised officer to be necessary for preserving, or preventing interference with, such books, documents or other records, 15
 - (f) require any person on, at or in the premises to give his or her name, home address and occupation to the authorised officer, 20
 - (g) with the consent of the person concerned, interview in private any person on, at or in the premises,
 - (h) take photographs or make any record or visual recording.
- (2) At any reasonable time, an authorised officer may require a person who— 25
- (a) is on, at or in the premises or is the owner of, or in charge of, the premises or is the owner of, or in charge of, the trade, business or any other activity being carried on there, or 30
 - (b) possesses or is in charge of any books, documents or other records held at the premises or in respect of any trade, business or other activity carried on at the premises, even if the books, documents or records are held elsewhere,
- to— 35
- (i) give to the authorised officer such assistance and furnish the authorised officer with such information as he or she may reasonably require for the purposes of monitoring and enforcing compliance with employment legislation or for any inspection, examination or investigation the authorised officer requires to carry out for those purposes, 40
 - (ii) produce to the authorised officer such books, documents or other records in the power or procurement of that person that, in the opinion of the authorised officer, are relevant to the monitoring and enforcement of compliance with employment legislation or to any inspection, examination or investigation he or she requires to carry out for those purposes and where such books, documents or other records are kept in non-legible form to reproduce them in legible form that can be taken away, 45 50

5 (iii) where books, documents or other records are produced, inspected, copied or removed pursuant to this section, require the person to provide an explanation of any of them, including an explanation of any apparent omissions from them or any omission of any book, document or other record.

10 (3) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises, an application may be made to the District Court under *section 37* for a warrant authorising such entry.

(4) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from the District Court under *section 37* authorising such entry.

15 (5) An authorised officer, when exercising any of the powers conferred by this Act, may be accompanied by such other authorised officers or members of the Garda Síochána or both as he or she considers necessary.

20 (6) Where the Director or an authorised officer proposes to retain, pursuant to this section, any books, documents or other records for a period longer than 14 days after the date on which they are removed, the Director or the authorised officer shall, before the end of that period of 14 days, or such longer period with the consent of the person hereafter mentioned, furnish, on request, a copy of the
25 books, documents or other records to the person who it appears to the Director or the authorised officer, but for the exercise of the powers under this section, is entitled to possession of them.

(7) An authorised officer, in the exercise of all or any of his or her powers under this Part, may—

30 (a) operate any computer at the premises which is being searched or cause any such computer to be operated by a person accompanying the authorised officer, and

35 (b) require any person at that premises who appears to the authorised officer to be in a position to facilitate access to the information held in any such computer or which can be accessed by the use of that computer—

(i) to give to the authorised officer any password necessary to operate it,

40 (ii) otherwise to enable the authorised officer to examine the information accessible by the computer in a form in which the information is visible and legible, or

(iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

45 **37.—(1)** Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Part, if a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purposes of the
50 performance by the Director of his or her functions under employment legislation is to be found on, at or in any premises or any part Search warrants.

of any premises, the judge may issue a warrant authorising a named authorised officer, accompanied by such authorised officers and members of the Garda Síochána as provided for in *section 36(5)*, at any time or times, within 28 days after the date of issue of the warrant, on production, if so requested, of the warrant— 5

- (a) to enter the premises specified in the warrant, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Part, and
- (b) to remove and retain such books, documents and any other records found there or in the possession of a person present at the time of the search, which the authorised officer reasonably believes relate directly or indirectly to the employment of persons. 10

(2) An application for a warrant under this section shall be made to a judge of the District Court in the district court district in which the premises are situated. 15

Director may require persons to give evidence or produce documents.

38.—(1) The Director may, for the purposes of the performance of his or her functions under employment legislation, if he or she believes on reasonable grounds that a person is in possession of information, or has a book, document or other record in his or her power or control that, in the opinion of the Director, is relevant to those purposes, serve a notice on the person requiring the person to appear before the Director— 20

- (a) to give the information, or
- (b) to produce the book, document or other record for examination. 25

(2) A notice under *subsection (1)* shall specify—

- (a) the matter to which the information or document, book or record relates, and
- (b) the date, time and place at which the person is required to appear before the Director. 30

(3) A notice under *subsection (1)* may require the person concerned to appear before the Director or a specified authorised officer and, if it does so, a reference in this section to the Director is to be read as a reference to the officer concerned. 35

(4) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement to appear before the Director under *subsection (1)* and has not been excused, or released from further attendance, by the Director.

(5) A person who appears before the Director in compliance with a requirement made under *subsection (1)* may be required to swear an oath or make an affirmation. 40

(6) Subject to *subsection (7)(b)*, no enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from giving the Director any such information. 45

(7) A person who appears before the Director under this section—

- (a) is entitled to be accompanied by a barrister or solicitor or, with the approval of the Director, any other person,
- (b) subject to this section, has the same protection and is, in addition to the offences under this section, subject to the same liabilities as a witness in civil proceedings before the High Court, and
- (c) is entitled to be paid such allowances and travelling or other expenses as are payable to or in respect of a witness attending in civil proceedings before the High Court.
- 5
- 10 (8) All allowances and expenses payable under *subsection (7)(c)* are payable by the Director.
- (9) (a) A person appearing before the Director in compliance with a requirement under *subsection (1)* commits an offence if the person, without reasonable excuse—
- 15 (i) refuses or fails to swear an oath or make an affirmation on being required to do so by the Director, or
- (ii) refuses or fails to give information in compliance with the requirement or refuses or fails to answer a question put to the person by the Director in relation to any such information, or
- 20 (iii) refuses or fails to produce a book, document or other record that is required to be produced in compliance with such a requirement.
- (b) It is a reasonable excuse for the purposes of *paragraph (a)* for a person to refuse or fail to answer a question or to produce a book, document or other record on the ground that the answer or production of the book, document or other record might tend to incriminate the person or to expose the person to a penalty.
- 25
- (c) *Paragraph (b)* does not limit what is a reasonable excuse for the purposes of *paragraph (a)*.
- 30
- (10) (a) Except as provided for by this subsection, information to be given, or a book, document or other record to be produced, to the Director by a person who appears before the Director in compliance with a requirement under this section is to be given or produced in private.
- 35
- (b) If a person who appears before the Director in compliance with a requirement under this section requests the matter to be dealt with in public, the Director shall comply with that request.
- 40
- (c) If the Director is satisfied that it is desirable in the public interest that the information to be given, or the book, document or other record to be produced, should be given or produced in public, the Director may direct accordingly.
- 45
- (d) If the information is to be given, or the book, document or other record is to be produced, in private, the Director may do either of the following—

- (i) give directions as to the persons who may be present during the proceedings, or
 - (ii) give directions preventing or restricting the publication of the whole or any part of the information or of matters contained in the book, document or other record. 5
- (e) Nothing in a direction given under *paragraph (d)* may prevent the presence of—
- (i) a barrister, solicitor or other person who is representing the person who is appearing before the Director, or 10
 - (ii) any authorised officer or other officer of the Director.
- (f) If the information is to be given, or the book, document or other record is to be produced, in private, a person (other than the person required to appear before the Director, that person's barrister, solicitor or other representative, an authorised officer or an officer of the Director) may be present only if entitled to be present because of a direction given under *paragraph (d)(i)*. 15
- (g) A person who contravenes *paragraph (f)* commits an offence. 20

Concealing facts disclosed by documents.

39.—A person commits an offence if, knowing or suspecting that an investigation by the Director into an offence under employment legislation is being or is likely to be carried out, the person—

- (a) falsifies, conceals, destroys or otherwise disposes of a book, document or other record which the person knows or suspects is or would be relevant to the investigation, or 25
- (b) causes or permits its falsification, concealment, destruction or disposal.

Authorised officer may seek court order for production of evidential material.

40.—(1) If a judge of the District Court is satisfied by information given on oath by an authorised officer that there are reasonable grounds for suspecting— 30

- (a) that an indictable offence under employment legislation is being, has been or is about to be committed, and
- (b) that a person specified in the application is in possession or control of material— 35
 - (i) which is likely to be of value (whether by itself or together with other information) to the investigation of the offence, or
 - (ii) which constitutes evidence of, or relating to the commission of, the offence, 40

the judge may order that the person shall either immediately or within such period as the order may specify—

- (I) produce the material to the authorised officer for the authorised officer to take away, or 45

(II) give the authorised officer access to it.

5 (2) Where the material consists of or includes books, documents or other records contained in a computer, the order shall have effect as an order to produce the books, documents or other records, or to give access to them, in a form in which they are visible and legible and in which they can be taken away.

(3) An order under this section—

10 (a) in so far as it may empower an authorised officer to take away books, documents or other records, or to be given access to them, shall also have effect as an order empowering the authorised officer to take away a copy of the books, documents or other records, as the case may be (and for that purpose the authorised officer may, if necessary, make a copy of them),

15 (b) shall not confer any right to production of, or access to, any document subject to legal privilege, and

(c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

20 (4) Any material taken away by an authorised officer under this section may be retained by the authorised officer for use as evidence in any criminal proceedings relating to an offence under employment legislation.

25 (5) (a) Information contained in any books, documents or other records which were produced to an authorised officer, or to which an authorised officer was given access, in accordance with an order under this section, shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible unless the information—

30 (i) is privileged from disclosure in such proceedings,

(ii) was supplied by a person who would not be compellable to give evidence at the instance of the prosecution,

35 (iii) was compiled for the purposes of, or in contemplation of, any—

(I) criminal investigation,

(II) investigation or inquiry carried out pursuant to or under any enactment,

40 (III) civil or criminal proceedings, or

(IV) proceedings of a disciplinary nature,

or unless the requirements of the provisions mentioned in *paragraph (b)* are not complied with.

45 (b) References in sections 7 (notice of documentary evidence), 8 (admission and weight of documentary evidence) and 9 (evidence as to credibility of supplier of information) of

the Criminal Evidence Act 1992 to a document or information contained in it shall be construed as including references to books, documents and other records mentioned in *paragraph (a)* and the information contained in them, and those provisions shall have effect accordingly with any necessary modifications. 5

(6) A judge of the District Court may, on the application of an authorised officer, or of any person to whom an order under this section relates, vary or discharge the order.

(7) A person who without reasonable excuse fails or refuses to comply with an order under this section commits an offence. 10

(8) In this section—

“commission”, in relation to an offence, includes an attempt to commit the offence;

“material” means any books, documents or other records or other things (including a computer). 15

Investigations by
Director on behalf
of Minister.

41.—(1) Where the Minister believes on reasonable grounds that there is a serious risk that employment legislation is being or has been contravened in respect of a particular employment or particular classes of employments and that it is in the public interest to do so, the Minister may require the Director to undertake an investigation of the employment or those classes of employments and the Director shall undertake the investigation and report on it to the Minister within such period as the Minister may reasonably require. 20

(2) The Director may arrange for one or more than one authorised officer to undertake the investigation under this section. 25

(3) *Sections 35 to 40* shall apply to investigations under this section.

(4) (a) The Minister may, after consultation with the Director and if satisfied that the publication would not prejudice any other investigation or proceedings by or on behalf of the Director in relation to an alleged contravention of employment legislation, publish the Director’s report of any investigation under this section. 30

(b) Where the statements in a report by the Director under this section are made without malice, the subsequent publication of the report by the Minister is privileged for the purposes of the law of defamation. 35

Power of Director
to require
production of
certain documents,
books or other
records.

42.—(1) An employer shall provide in writing to the Director, on request from the Director, and within such reasonable period as the Director specifies in the request, such information as the Director specifies in the request in relation to any person who is, or was at any time during the previous 3 years, employed by that employer, for the purpose of enabling the Director to establish whether or not employment legislation is being or was complied with in relation to that person. 40 45

(2) An employer shall produce to the Director, on request from the Director, and within such reasonable period as the Director specifies in the request, such books, documents or other records

(including records in non-legible form reproduced in legible form) relating to any period within the previous 3 years specified in the request for examination for the purpose of enabling the Director to establish whether or not employment legislation is being or was complied with, whether generally or in relation to a particular person or to a particular class or particular classes of persons.

(3) (a) Any other person who appears to the Director to be in possession of—

(i) the books, documents or other records referred to in subsection (2), or

(ii) other books, documents or other records which may constitute copies of those books, documents or other records, or

(iii) subject to paragraph (c), other books, documents or other records which may relate to any books, documents or other records of the employer concerned,

shall produce to the Director, on request from the Director, and within such reasonable period as the Director specifies in the request those books, documents or other records, or copies of them, as the case may be.

(b) Where a person referred to in paragraph (a) claims a lien on books, documents or other records produced by him or her, the production shall be without prejudice to the lien.

(c) The power under paragraph (a)(iii) shall not be exercised unless—

(i) in the opinion of the Director, there are reasonable grounds for believing that the first and second-mentioned books, documents or other records in paragraph (a)(iii) are related to one another (and those grounds may include grounds related to the relationship between the employer and the person of whom the requirement under paragraph (a)(iii) is proposed to be made, a common origin of some or all of the information contained in those books, documents or other records, or similar considerations), and

(ii) save where the Director is of the opinion that compliance with this subparagraph could result in the concealment, falsification, destruction or the disposal otherwise of the books, documents or other records concerned, the Director notifies the person of whom the requirement under paragraph (a)(iii) is proposed to be made (“the third party”) that the Director proposes to make that requirement and states in that notification the grounds for his or her opinion under subparagraph (i) and that the third party may (if such is his or her contention) make submissions to the Director, within 21 days after the date of the making of the notification, as to why the third party believes the said opinion of the Director to be erroneous (and the Director shall have regard to any such submissions so made before finally deciding whether to make the said requirement or not),

but in no case shall the third party be obliged to comply with such a requirement in relation to any particular book, document or other record concerned if he or she would be entitled, by virtue of any rule of law or enactment, to refuse to produce, in any proceedings, the book, document or other record, on the ground of any privilege. 5

(4) Any power conferred by, or by virtue of, this section to require an employer or other person to produce books, documents or other records shall include power—

(a) to require that person, or any other person who is an officer or former officer of, or is or was at any time employed (including in a professional, consultancy or similar capacity) by, the employer concerned, to provide, insofar as the person may be reasonably able so to do, an explanation of any of them, including an explanation of any apparent omissions from them or any omission of any book, document or other record, and 10 15

(b) if the books, documents or other records are not produced, to require the person who was required to produce them to state, to the best of his or her knowledge and belief, where they are, 20

and in either event to give all assistance to the Director as the employer or person is reasonably able to give in connection with an examination or proposed examination of the books, documents or other records under this section. 25

(5) If a requirement to produce books, documents or other records or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the employer or other person on whom the requirement was so imposed commits an offence but where an employer or person is charged with an offence under this subsection in respect of a requirement to produce books, documents or other records, it shall be a defence to prove that they were not in his or her possession or under his or her control and that it was not reasonably practicable for him or her to comply with the requirement. 30 35

(6) A statement made or an explanation provided by an employer or person in compliance with a requirement imposed by virtue of this section may be used in evidence against him or her in any proceedings whatsoever (save proceedings for an offence (other than an offence under *subsection (5) or (7)*)). 40

(7) An employer or person who provides an explanation or makes a statement required under this section which is false or misleading in a material respect, knowing it to be so false or misleading, commits an offence.

(8) An employer or other person with notice of a requirement under *subsection (2) or (3)*, as the case may be, who conceals, falsifies, destroys, mutilates or otherwise disposes of any book, document or other record, the subject of a requirement, commits an offence. 45

Requirement on examiner, administrator, receiver or liquidator to produce certain records for examination.

43.—(1) The Director may require an examiner, administrator, receiver or liquidator, as the case may be, appointed under the Companies Acts or the Insurance (No. 2) Act 1983, in relation to an employer, to produce for examination any books, documents or other records (including records in non-legible form reproduced in 50

legible form) in relation to the employment of persons by that employer during the period specified by the Director in the requirement, which period shall not in any case be more than 3 years before the date of the requirement, and the examiner, administrator, receiver or liquidator shall comply with the requirement of the Director within 21 days after the date of the requirement.

(2) A person commits an offence if he or she—

(a) fails without reasonable excuse to produce the books, documents or other records concerned within the period referred to in *subsection (1)*, or

(b) provides, or causes or knowingly allows to be provided, books, documents or other records which the person knows to be false in a material particular.

44.—(1) Where the Director—

(a) has reason to believe that a vehicle has been used, pursuant to an agreement, for or in connection with the employment of a person, and

(b) is unable to ascertain from the licensing records maintained in respect of that vehicle who was in possession of the vehicle on the occasion concerned,

Director may seek certain information from registered owners of motor vehicles.

the Director may, for the purposes of his or her functions, make a request to the registered owner of the vehicle for particulars of the name and address of any person in possession of the vehicle on the occasion concerned and the registered owner shall give the information to the Director in writing within 21 days after the date of the request.

(2) A person commits an offence if he or she gives information under *subsection (1)* which he or she knows to be false or misleading.

(3) Where a registered owner fails without reasonable excuse or refuses to give information to the Director under *subsection (1)*, the registered owner is presumed, until the contrary is shown, to have had possession of the vehicle on the occasion concerned.

(4) In this section—

“agreement” includes a hire-purchase agreement or consumer-hire agreement (both within the meaning of the Consumer Credit Act 1995) or a lease;

“licensing records” means records established and maintained pursuant to section 60(2) of the Finance Act 1993;

“registered owner”, in relation to a vehicle, means—

(a) in the case of a vehicle used under a trade licence issued under section 21 of the Finance (No. 2) Act 1992, the holder of the licence,

(b) in any other case, the person whose name is most recently entered in the licensing records maintained in respect of that vehicle.

45.—(1) In this section—

“approved body” means a body approved by the Director for the purposes of *subsection (2)*;

“registered employment agreement” means the registered employment agreement within the meaning of Part III of the Industrial Relations Act 1946 that applies to the electrical contracting industry; 5

“service agreement” means an agreement entered into under *subsection (2)*.

(2) Where the Director considers it appropriate in the interests of securing compliance with the registered employment agreement, he or she, subject to the prior consent of the Minister, may enter into a service agreement with such body as the Director, subject to the prior consent of the Minister, may approve for the purpose of carrying out, in accordance with this section, inspections of books, documents or other records relating to the registered employment agreement which the employers concerned are required to keep pursuant to section 51(1) of the Industrial Relations Act 1990 and, where necessary, taking copies of any such books, documents or other records, including in the case of information in a non-legible form, copies of such information in a legible form. 10 15 20

(3) (a) An approved body shall perform its functions under a service agreement in accordance with a code of conduct relating to controls on interests, conduct and ethical behaviour drawn up by the Director, subject to the prior consent of the Minister (and revised from time to time, as the Director considers necessary and appropriate, subject to the prior consent of the Minister), for the purposes of this section, following consultation with the approved body. 25

(b) A code of conduct drawn up under *paragraph (a)* shall be published by the Director in such form and manner as he or she considers appropriate. 30

(4) A service agreement shall specify at least the following:

(a) that the approved body is bound by the code of conduct drawn up under *subsection (3)*; 35

(b) the nature, minimum number and frequency of the inspections to be carried out by the approved body under the service agreement;

(c) the procedures to be followed and the criteria and standards to be met by the approved body in carrying out any such inspection; 40

(d) the qualifications and experience required of persons appointed by the approved body to carry out any such inspection on its behalf;

(e) that the approved body shall report to the Director any failure by an employer to permit entry by a person appointed by the approved body to carry out any such inspection on its behalf or to produce the records concerned when requested by such person; 45

- 5 (f) the protection and non-disclosure, and submission to the Director as he or she requires, of all information gathered and copies of books, documents or other records taken by the approved body in the course of, or in connection with, any such inspection.
- (5) An approved body which proposes to enter into a service agreement with the Director shall—
- (a) agree to be bound by the code of conduct drawn up under subsection (3), and
- 10 (b) indicate to the Director the means by which it proposes to meet the requirements specified in subsection (4)(b), including the resources it proposes to deploy in performance of the service agreement.
- 15 (6) (a) A person appointed by an approved body to perform on its behalf any function under a service agreement—
- (i) shall be authorised in writing by the Director for those purposes and shall be given a certificate of his or her authorisation, issued by the Director, and
- 20 (ii) when performing any such function shall produce the certificate of authorisation, or a copy of it, if requested to do so by any person affected by the performance of the function.
- (b) An authorisation under this subsection—
- 25 (i) may be for a fixed period and may be renewed by the Director as he or she sees fit, following consultation with the approved body, while the person continues to perform on behalf of an approved body any function under a service agreement, and
- (ii) ceases—
- 30 (I) if the Director revokes the authorisation following consultation with the approved body,
- (II) if the authorisation is for a fixed period, at the end of the period, or
- 35 (III) if the person authorised ceases to be engaged by the approved body to perform on its behalf any function under a service agreement.
- (7) The following provisions apply to any inspection carried out under a service agreement:
- 40 (a) reasonable prior notice shall be given to the occupier of the premises where the books, documents or other records are kept of the intention to inspect same;
- (b) if the occupier objects to the proposed inspection, he or she shall give reasons in writing within 14 days to the approved body but shall retain all of the books, documents or other records concerned at the premises, unless otherwise directed by the approved body;
- 45

(c) the approved body shall notify the Director as soon as practicable of any objection made under *paragraph (b)*, and may apply to the District Court in the district court district in which books, documents or other records are kept for a warrant authorising a named person, on behalf of the approved body, to enter the premises specified in the warrant and inspect and, where necessary, take copies of the books, documents or other records concerned, and shall notify the occupier in advance of that application. 5

(8) If a judge of the District Court is satisfied that there are reasonable grounds for so doing, he or she may issue a warrant authorising a named person, on behalf of the approved body, at any time or times, within 28 days from the date of issue of the warrant, on production, if so requested, of the warrant, to enter the premises specified in the warrant for the purposes of inspecting and, where necessary, taking copies of the books, documents or other records concerned. 10 15

(9) An employer who fails to comply with an order of the District Court under *subsection (8)* commits an offence.

(10) The existence of a service agreement does not affect any power of the Director under employment legislation to carry out such inspections or investigations as the Director considers appropriate for the purposes of the performance of his or her functions. 20

(11) Subject to *subsection (12)*, a service agreement shall be for a specified period of not more than 3 years or until the termination of the registered employment agreement, whichever is the earlier, and may, at the request of either party, be subject to review during that period. 25

(12) A service agreement may be renewed or further renewed for such period or further period of not more than 3 years in respect of each renewal or until the termination of the registered employment agreement, whichever is the earlier, and may, at the request of either party, be subject to review during the period of renewal or further renewal. 30

(13) A service agreement or any renewal or further renewal of a service agreement shall be published by the Director in the form and manner the Director considers appropriate and shall be notified to the Minister, as soon as practicable after it is entered into or renewed or further renewed. 35

(14) Where a service agreement is reviewed under *subsection (11)* or *(12)*, as the case may be, any amendments to the service agreement agreed by the Director and the approved body shall be subject to the prior consent of the Minister and for this purpose the Director— 40

(a) shall notify the Minister of the proposed amendments, and 45

(b) where the consent of the Minister has been obtained to the proposed amendments, with or without modification, shall publish, as soon as practicable, in the form and manner the Director considers appropriate, the amendments to the service agreement and the reasons for those amendments. 50

(15) The Director may, with the prior consent of the Minister, revoke a service agreement in accordance with its terms if satisfied

following a review under *subsection (11) or (12)*, as the case may be, that the approved body is no longer able to carry out inspections adequately and properly in accordance with the terms of the agreement.

- 5 (16) An approved body shall—
- (a) not later than 2 months after the end of each year during which a service agreement is in force, make a report in writing to the Director on its performance under the service agreement for that year, and
- 10 (b) make such other reports relating to its performance under the service agreement as the Director may from time to time require,

and the Director may publish any report made to him or her under this subsection in such form and manner as he or she considers
15 appropriate.

(17) The first report made under *subsection (16)(a)* shall be in respect of the period beginning on the date of the service agreement concerned and ending on the following 31 December.

(18) The Director shall—

- 20 (a) at the request of the Minister, and
- (b) in the annual report under *section 26*,

provide details of any service agreement in force.

25 **46.—(1)** In this section “competent authority” means a person in whom functions relating to the enforcement of the law of a state (other than the State) concerning employment, whether in a particular sector of that state’s economy or throughout that economy generally, are vested under the law of that other state.

Administrative cooperation with competent authorities of other states on certain matters relating to employment.

30 (2) The Minister, after consultation with the Director, or the Director with the approval of the Minister, may, for the purpose of securing compliance with employment legislation in the State and the detection or investigation of breaches of employment legislation, enter into an arrangement with any competent authority.

(3) Each party to an arrangement referred to in *subsection (2)* may—

- 35 (a) provide to the other party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions, and
- 40 (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

45 (4) The Minister or the Director, as the case may be, shall not furnish any information to a competent authority pursuant to an arrangement to which this section applies unless he or she requires of, and obtains from, that body an undertaking in writing by it that it will comply with the terms specified in that requirement, being terms that correspond to the provisions of any enactment concerning

disclosure of that information by the Minister or the Director, as the case may be.

(5) The Minister or the Director, as the case may be, may give an undertaking to a competent authority that he or she will comply with terms specified in a requirement made of the Minister or the Director by the competent authority to give such an undertaking where— 5

(a) those terms correspond to the provisions of any law in force in the state in which the competent authority is established, being provisions which concern the disclosure by the competent authority of the information referred to in *paragraph (b)*, and 10

(b) compliance with the requirement is a condition imposed by the competent authority for furnishing information in its possession to the Minister or the Director pursuant to an arrangement to which this section applies. 15

(6) The Director shall inform the Minister concerning every arrangement entered into under this section.

(7) An arrangement under this section shall not operate to require the Minister or the Director, as the case may be, to provide information to a competent authority if the disclosure of that information by the Minister or the Director is prohibited by law. 20

Compliance notices.

47.—(1) Where the Director or an authorised officer is of the opinion that any person has not received any amount of money owing to the person under employment legislation, the Director or authorised officer, as the case may be, shall give a notice (in this Act referred to as a “compliance notice”) to the person’s employer. 25

(2) A compliance notice shall be signed and dated by the Director or authorised officer, as the case may be, and shall—

(a) contain the opinion referred to in *subsection (1)* and the reasons for that opinion, 30

(b) direct the employer to pay to the person concerned the amount of money owing to that person,

(c) specify the date (which shall not in any case be less than 21 days from the date of the notice) by which the employer is to comply with the direction, 35

(d) include information regarding the submission of an objection and the making of an appeal in relation to the notice, specifying—

(i) the form and manner of an objection,

(ii) the form and manner of an appeal, and 40

(iii) the address of the Director for the purpose of submitting an objection or notifying the Director of an appeal, as the case may be, under *subsection (5)*,

(e) contain a statement that, if an objection is not submitted in accordance with this section and within the time specified in *subsection (5)(a)*, then— 45

(i) the notice will be treated as not disputed, and

(ii) the person will be deemed to have accepted the notice and to have agreed to comply with the direction.

5 (3) The date specified in *subsection (2)(c)* shall not be earlier than the period within which an objection may be submitted under *subsection (5)*.

10 (4) (a) An employer on whom a compliance notice has been served who is of the opinion that the compliance notice has been complied with shall, within the time specified in the notice for the purposes of *subsection (2)(c)*, confirm in writing to the Director or authorised officer, as the case may be, and provide sufficient evidence, that the compliance notice has been complied with.

15 (b) The Director or authorised officer, on being satisfied that the compliance notice has been complied with, shall within 21 days after receiving confirmation from the employer concerned under *paragraph (a)*, give notice to the employer concerned of compliance with the compliance notice.

20 (c) The notice under *paragraph (b)* does not prejudice any inspection, examination or investigation which the Director or authorised officer may consider necessary in relation to the employment or period concerned or the service of a further compliance notice which he or she may consider necessary.

25 (5) (a) An employer may, within 14 days beginning on the day on which the compliance notice is served on him or her, submit an objection to the notice in the form and manner specified in the notice, and the Director or authorised officer, as the case may be, shall consider the objection and, as he or she sees fit, vary, withdraw, or confirm the notice and shall notify the employer of the decision and the reasons for the decision within 14 days after receipt of the objection.

30 (b) (i) The employer may appeal in the prescribed manner against a decision under *paragraph (a)* to a judge of the District Court in the district court district in which the compliance notice was served within 21 days after the decision is notified by the Director or authorised officer, as the case may be.

35 (ii) A person who appeals under *subparagraph (i)* shall at the same time notify the Director of the appeal and the grounds for the appeal.

40 (iii) The Director or authorised officer, as the case may be, shall be entitled to appear, be heard and adduce evidence at the hearing of an appeal under *subparagraph (i)*.

45 (iv) In determining an appeal under *subparagraph (i)* the judge of the District Court may—

50 (I) if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the compliance notice, and

(II) if he or she is satisfied that the employer is liable to pay any amount of money owing to an employee order that the employer pay the amount to the employee within 21 days after the date of the making of the order. 5

(6) Where an objection is submitted or an appeal made under *subsection (5)*, and the compliance notice is neither withdrawn nor cancelled, as the case may be, the notice takes effect on the later of—

(a) the day after the day on which the notice is confirmed or varied, 10

(b) the day after the objection or appeal is withdrawn, or

(c) the day specified in the notice.

(7) Where no objection is submitted or appeal made under *subsection (5)*, the notice takes effect on the later of—

(a) the end of the period for submitting an objection, or 15

(b) the day specified in the notice.

(8) The Director or authorised officer, as the case may be, may—

(a) withdraw a compliance notice at any time, as he or she considers appropriate, or

(b) where no objection is submitted or appeal made or pending, extend the period specified in the notice for the purposes of *subsection (2)(d)*, 20

and shall advise the employer immediately of so doing.

(9) (a) This section is without prejudice to—

(i) subject to *paragraph (b)*, the right of any person to secure his or her entitlements under any provision of employment legislation, or 25

(ii) the bringing of a prosecution under employment legislation.

(b) Relief may not be granted to a person, both under this section and any other provision of employment legislation, in respect of any entitlement of that person to any amount of money owing to that person under such other provision of employment legislation where that amount is paid pursuant to a compliance notice under this section. 30 35

(10) Withdrawal of a compliance notice under *subsection (8)(a)* does not prevent the service of another compliance notice whether in respect of the same matter or a different matter.

(11) In this section, “amount of money owing to an employee” includes any arrears of pay or compensation due for any entitlement denied, together with interest at the rate for the time being fixed by the Minister for the purposes of section 4(2) of the Prompt Payment of Accounts Act 1997 under section 10 of that Act for each day or part of a day beginning on the day next following the end of the period referred to in *subsection (2)(d)* on any arrears of pay or compensation that remain or remains unpaid for the time being. 40 45

48.—(1) A notice or other document, requirement, request or any other thing (including proceedings in respect of an offence under employment legislation) required to be served on, sent or given to any person under employment legislation shall be in writing and addressed to the person by name and may be served on, sent or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by prepaid post to the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by prepaid post addressed to the person to, that address;
- (e) where the address at which the person ordinarily resides or carries on business cannot be ascertained by reasonable inquiry and the notice or other document is required to be served on, sent or given to him or her in respect of any premises, by delivering it to a person over 16 years of age resident at or employed on the premises or by affixing it in a conspicuous position on or near the premises;
- (f) where the person giving the notice considers that the immediate giving of the notice is required and where there is a facility for receiving a copy of the notice by electronic mail or a facsimile of the notice by electronic means at the address at which the person ordinarily resides or carries on business, by transmitting a copy of the notice by electronic means or a facsimile of the notice by such means to that address, provided that the notice is also served or given in any of the other ways referred to in this subsection other than by this paragraph.

(2) For the purposes of this section—

- (a) a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body, resident in the State, shall be deemed to be ordinarily resident at its principal office or place of business,
- (b) in the case of a body corporate or an unincorporated body of persons, to which *paragraph (a)* does not apply, the service of notices may be effected by sending a copy of the notice or other document by prepaid post addressed to the body at any place in the State where the body carries on business or in such other manner as an originating summons may be served on such a body under the Rules of the Superior Courts.

(3) Where the name of the person concerned cannot be ascertained by reasonable inquiry a notice under this Act may be addressed to “the occupier”, “the owner” or “the person in charge”.

(4) A person commits an offence if the person, at any time during the period of 3 months after a notice is affixed under *subsection (1)(e)*, removes, damages or defaces the notice without lawful authority.

Enforcement orders.

49.—(1) The Director may apply to the High Court to make an order under *subsection (6)* requiring a person (in this section referred to as the “respondent”) to comply with any provision of employment legislation. 5

(2) An application to the High Court under *subsection (1)* shall be by way of motion. 10

(3) The High Court may hear an application under *subsection (1)* only if it is satisfied that a copy of the application has been served on the respondent.

(4) If it considers it appropriate to do so having regard to the nature and extent of the breach of the provision of employment legislation concerned, the damage that has been or may be suffered by any person and the interests of justice, the High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (1)*. 15

(5) The Court may not refuse interim or interlocutory relief merely because the Director may not suffer damage if relief were not granted pending determination of the application. 20

(6) On the hearing of an application made under *subsection (1)*, the High Court may make an order requiring the respondent to comply with the provision of employment legislation concerned or may refuse the application. 25

(7) If the High Court makes an order under *subsection (4)*, it may make such ancillary orders as it considers appropriate, including an order for the payment of an amount of money owing to any employee under employment legislation (including interest on arrears of pay or compensation payable). 30

(8) This section is without prejudice to the bringing of a prosecution under employment legislation.

PART 5

STRENGTHENING OBLIGATIONS OF EMPLOYERS AND RIGHTS OF EMPLOYEES 35

Protections for persons reporting breaches.

50.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to—

(a) the Director or an officer of the Director, 40

(b) the Minister or an officer of the Minister, or

(c) a member of the Garda Síochána,

of his or her opinion that—

(i) an offence under any provision of employment legislation has been or is being committed, or

(ii) any other provision of employment legislation has not been or is not being complied with,

5 unless it is proved that the person has not acted reasonably and in good faith in forming that opinion and communicating it to any of the persons specified in *paragraphs (a) to (c)*.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to any other form
10 of relief.

(3) A person who states to any of the persons specified in *subsection (1)(a) to (c)* that a person—

(a) has committed or is committing an offence under any provision of employment legislation, or

15 (b) has failed or is failing to comply with any other provision of employment legislation,

knowing the statement to be false, commits an offence.

(4) *Subsection (1)* is in addition to, and not in substitution for, any
20 privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this Act, in respect of the communication by a person to another (whether that other person is any of the persons specified in *subsection (1)(a) to (c)* or not) of an opinion of the kind referred to in *subsection (1)(i) or (ii)*.

25 **51.—(1)** In this section—

“Act of 2001” means the Protection of Employees (Part-Time Work) Act 2001;

Protection of employees from penalisation.

“full-time work” has the same meaning as in section 15 of the Act of 2001;

30 “part-time work” has the same meaning as in section 13 of the Act of 2001;

“penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or
35 her employment.

(2) Without prejudice to the generality of *subsection (1)*, “penalisation” in this section includes—

(a) suspension, lay-off or dismissal, or the threat of suspension, lay-off or dismissal,

40 (b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),

- (e) coercion, intimidation or harassment,
- (f) discrimination, disadvantage or adverse treatment,
- (g) injury, damage or loss, and
- (h) threats of reprisal.

(3) *Subsection (2)(c)* shall not be construed in a manner which prevents an employer from ensuring that the business concerned is carried on in an efficient and effective manner. 5

(4) An employer or any person acting on behalf of an employer shall not penalise an employee for—

- (a) seeking to exercise or having exercised any entitlement under employment legislation (including the making of a complaint thereunder to a rights commissioner or the making of an appeal against the decision of the rights commissioner), 10
- (b) subject to *subsection (5)*, refusing to accede to a request by the employer to transfer from performing— 15
 - (i) full-time work to performing part-time work, or
 - (ii) part-time work to performing full-time work,
- (c) having become, or in future becoming or possibly becoming, entitled in accordance with the National Minimum Wage Act 2000 to remuneration at an hourly rate of pay that on average is not less than the national minimum rate of pay, or a particular percentage of that rate of pay, 20
- (d) having in good faith opposed by lawful means an act which is unlawful under employment legislation, 25
- (e) having formed an opinion of the kind referred to in *subsection (1)(i)* or *(ii)* of *section 50* and communicated it, whether in writing or otherwise, to any of the persons specified in *subsection (1)(a)* to *(c)* of that section if the employee has acted reasonably and in good faith in forming that opinion and so communicating it, 30
- (f) giving evidence in any proceedings under employment legislation,
- (g) performing the functions of an employee representative in accordance with any enactment, or 35
- (h) giving notice of his or her intention to do any of the things referred to in *paragraph (a), (b), (e), (f) or (g)*.

(5) Where an employee refuses to accede to a request referred to in *subsection (4)(b)*, any action by the employer or a person acting on behalf of an employer, with regard to the employee concerned, shall not constitute a penalisation of the employee if both of the following conditions are complied with— 40

- (a) having regard to all the circumstances, there are substantial grounds to justify making the request concerned and taking that action consequent on the employee's refusal, and 45

(b) taking that action is in accordance with the employee's contract of employment and the provisions of any other enactment of the kind to which section 20(2) of the Act of 2001 applies.

5 (6) *Schedule 2* shall have effect for the purposes of *subsection (4)*.

(7) An employer who contravenes *subsection (4)* commits an offence.

10 (8) (a) If a person is penalised by another person (in this subsection referred to as "the second-mentioned person") because—

(i) the person in good faith opposed by lawful means an act which is unlawful under employment legislation,

(ii) the person gave, or proposes to give, evidence in any proceedings under employment legislation,

15 (iii) the person or a third person acting reasonably and in good faith formed an opinion of the kind referred to in *subsection (1)(i)* or *(ii)* of *section 50* and communicated it, whether in writing or otherwise, to any of the persons specified in *subsection (1)(a)* to *(c)* of that section,

20 the person has a right of action in tort against the second-mentioned person.

(b) An employee may not pursue a right of action under this subsection and also under other employment legislation.

25 (9) For the purposes of this section dismissal includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

30 (b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

52.—(1) In this section—

"statutory employment records" means—

Statutory
employment
records.

35 (a) the records, particulars and other information specified in *Schedule 3*,

(b) in respect of each employee, a copy of his or her contract of employment (if any),

40 (c) the contract or any other agreement between an employer and any third party for employees of that employer to provide services for or on behalf of the third party.

45 (2) (a) Where the Minister considers it to be necessary and appropriate for the purposes of safeguarding the entitlements of and protections for employees under, and the enforcement of and compliance with, employment legislation,

the Minister may, from time to time, by regulations provide—

(i) that such of the statutory employment records as may be specified in the regulations shall be kept and maintained by employers or any class or classes of employers, in respect of each employee, 5

(ii) that all or any of those records so specified shall be so kept and maintained in an official language of the State, and

(iii) subject to *paragraph (b)*, that all or any of those records so specified shall be so kept and maintained for such period or periods as may be specified in the regulations. 10

(b) A period specified pursuant to *paragraph (a)(iii)* shall be— 15

(i) in the case of every employee, not less than the preceding 3 years, or the duration of the employment, whichever is the shorter period, and

(ii) a further 2 years after the employment concerned has ceased. 20

(3) Without prejudice to *section 36*, the statutory employment records (including any linking data, documents, books or records showing details of the particulars on which those records were compiled) shall be made available by an employer, on request, to an authorised officer, for inspection or examination by him or her in the exercise of any power conferred on the authorised officer, at any of the following places in the State specified by the authorised officer— 25

(a) the place where the records are required to be kept in accordance with any enactment, 30

(b) the registered office of the employer,

(c) the principal place of business of the employer, or

(d) such other place as may be agreed by the employer and the authorised officer.

(4) An employer commits an offence if he or she— 35

(a) fails to comply with regulations made under *subsection (2)*, or

(b) a request made under *subsection (3)*.

(5) (a) In this subsection—

“person to whom this subsection applies” means a person who contracts or otherwise agrees with an employer for the provision to or for the person of services in the State by any employee or employees of that employer; 40

“records to which this subsection applies” means—

(i) a copy of the contract or other agreement concerned, 45

- (ii) every invoice or other document which specifies the cost of those services to the person during the term of the contract or agreement,
- 5 (iii) a record of the number and names of the employees concerned,
- (iv) a record of the hours worked each day by each of those employees in the provision of the services concerned during the term of the contract or other agreement.
- 10 (b) Where the Minister considers it necessary and appropriate for the purposes of safeguarding the entitlements of and protections for employees under, and the enforcement of and compliance with, employment legislation, the Minister may, from time to time, by regulations provide—
- 15 (i) that in the case of persons to whom this subsection applies such of the records to which this subsection applies as may be specified in the regulations shall be kept and maintained by those persons,
- 20 (ii) that all or any of the records so specified shall be so kept and maintained in an official language of the State, and
- (iii) subject to *paragraph (c)*, that all or any of the those records so specified shall be so kept and maintained for such period or periods as may be specified in the regulations.
- 25 (c) A period specified pursuant to *paragraph (b)(iii)* shall not be less than 3 years from the date of the contract or other agreement concerned.
- 30 (d) Without prejudice to *section 36*, the records to which this subsection applies shall be made available by a person to whom this subsection applies, on request, to an authorised officer, for inspection or examination by him or her in the exercise of any power conferred on the authorised officer, at any of the following places in the State specified by the authorised officer—
- 35 (i) the place where the records are required to be kept in accordance with any enactment,
- (ii) the registered office of the person concerned,
- 40 (iii) the principal place of business of the person concerned, or
- (iv) such other place as may be agreed by the person concerned and the authorised officer.
- (e) A person to whom this subsection applies commits an offence if he or she fails to comply with—
- 45 (i) regulations made under *paragraph (b)*, or
- (ii) a request under *paragraph (d)*.

(6) Where, in respect of his or her compliance with a particular provision of employment legislation in relation to an employee, an employer fails to keep any statutory employment records or a person fails to keep any of the records to which *subsection (5)* applies, the onus of proving in proceedings that the provision concerned was complied with in relation to that employee shall lie on the employer or other person, as the case may be. 5

Codes of practice for purposes of *section 52*, etc.

53.—(1) The Director may, or if so requested by the Minister shall, prepare and publish codes of practice for the purpose of providing practical guidance to employers as to compliance with any requirement under— 10

(a) *section 52*,

(b) section 4 of the Payment of Wages Act 1991, or

(c) section 3 of the Terms of Employment (Information) Act 1994. 15

(2) Before publishing a code of practice, the Director—

(a) shall obtain the consent of the Minister,

(b) shall publish in such manner as the Director considers appropriate, including by electronic means, a draft of the code of practice, 20

(c) where a draft of the code of practice is published under *paragraph (b)*, shall give persons 28 days from the date of publication of the draft code within which to make written representations to the Director in relation to the draft code, or such further period, not exceeding 28 days, as the Director considers appropriate, and 25

(d) following consultation with the Minister, or any other Minister of the Government or any other person that the Director considers appropriate, and, where relevant, having considered the representations, if any, made, shall submit the draft of the code of practice to the Minister for his or her approval, with or without modification. 30

(3) Where the Director publishes a code of practice he or she shall publish a notice of the publication in the *Iris Oifigiúil* and the notice shall— 35

(a) identify the code,

(b) specify the particular requirement specified in *subsection (1)* in respect of which the code is published, and

(c) specify the date on which the code comes into operation.

(4) The Director may, with the consent of the Minister and following consultation with any other person that the Director considers appropriate or as the Minister directs, amend or revoke any code of practice or part of any code of practice. 40

(5) Where the Director amends or revokes a code of practice or any part of a code of practice published under this section, the Director shall publish notice of the amendment or revocation, as the case may be, in the *Iris Oifigiúil*. 45

(6) The Director shall make available for public inspection, without charge, on the internet on the website of the Director and at the office of the Director and at such other places as the Director considers appropriate, during normal working hours—

5 (a) a copy of each code of practice published by him or her and not revoked, and

(b) where a code of practice has been amended, a copy of the code as amended.

10 **54.—(1)** An employer shall, within 14 days after the employment of any person has ceased, provide to the person—

Duty of employers to provide promptly certain documents and property to employees on cessation of employment.

(a) a statement in the prescribed form setting out the duration and nature of the employment concerned and a general description of the work involved, and

(b) any personal documents or other property of the person.

15 (2) An employer who does not comply with *subsection (1)* commits an offence.

20 (3) In this section “personal document” includes a passport, a driving licence, an identity card, a document relating to any account held with a financial institution, a document relating to the skills, qualifications or experience of the person concerned and travel documents.

PART 6

PROCEEDINGS AND PENALTIES FOR OFFENCES AND FIXED PAYMENT NOTICES

25 **55.—(1)** Summary proceedings for an offence under this Act may be brought and prosecuted by the Director.

Proceedings for offences.

(2) (a) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under employment legislation may be instituted—

30 (i) within 12 months from the date on which the offence was committed, or

35 (ii) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person’s knowledge,

whichever is later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

40 (b) For the purposes of *paragraph (a)*, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that paragraph came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this paragraph and to be so signed shall be admitted as evidence without proof

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of signature of the person purporting to sign the certificate, unless the contrary is shown.

(3) It shall be a defence in proceedings for an offence under employment legislation by an employer or other person if the employer or other person proves that he or she exercised due diligence and took reasonable precautions to avoid the commission of the offence by the employer or other person and also by any person under the control of the employer or other person.

Offences by bodies corporate.

56.—Where an offence under employment legislation is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Summary trial of persons indicted.

57.—(1) If a person is indicted for an offence under employment legislation, the District Court may try the person summarily if—

- (a) the court is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily,
- (b) the accused, on being informed by the court of his or her right to be tried with a jury, does not object to being tried summarily, and
- (c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.

(2) On conviction by the court for an offence that is tried summarily under *subsection (1)* the accused is liable—

- (a) to the fines and penalties in *section 59(1)(a)*, and
- (b) for the costs and expenses under *section 60*.

Evidence through television link.

58.—(1) In any proceedings for an offence under employment legislation, a person, other than the accused, may, with the leave of the court and where the court is satisfied that it is in the interests of justice to do so, give evidence through a live television link if the person is outside the State.

(2) Evidence given under *subsection (1)* shall be video-recorded.

(3) In any proceedings referred to in *subsection (1)* in any circuit or district court district where the court is satisfied that leave should be granted for evidence to be given through a live television link pursuant to that subsection but the necessary facilities for doing so are not available in that circuit or district, the court may by order transfer the proceedings to a circuit or district court district where such facilities are available and, where such an order is made, the jurisdiction of the court to which the proceedings have been transferred may be exercised—

- (a) in the case of the Circuit Court, by the judge of the circuit concerned, and

(b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

5 (4) A person who, in giving evidence under *subsection (1)* from outside the State, makes a statement material in the proceedings which the person knows to be false or does not believe to be true commits perjury.

10 (5) Proceedings for an offence referred to in *subsection (4)* may be taken, and the offence may, for the purpose of the jurisdiction of the court, be treated as having been committed, in any place in the State.

(6) This section is without prejudice to any other enactment providing for the giving of evidence through a live television link.

15 **59.—(1)** A person guilty of an offence under this Act (other than an offence under any of the provisions specified in *subsections (2)* and *(3)*) is liable— Fines and penalties.

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

20 (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.

25 (2) A person guilty of an offence under *section 30(3), 32(4), 38(10)(g), 54(2)* or *paragraph 3(4)* of *Schedule 2* is liable on summary conviction to a fine not exceeding €5,000.

(3) A person guilty of an offence under *paragraph 3(2)* of *Schedule 2* is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

30 (4) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence referred to in *subsection (1)* as if, in lieu of the penalties specified in *subsection (3)(a)* of that section, there were specified therein the penalties provided for in *subsection (1)(a)* and the reference in *subsection (2)(a)* of the said section 13 to the penalties provided for by *subsection (3)* shall be construed and have
35 effect accordingly.

40 **60.—(1)** Where a person is convicted of an offence under employment legislation, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Director the costs and expenses measured by the court, incurred by the Director in relation to the investigation, detection and prosecution of the offence. Convicted persons liable for costs and expenses of proceedings and investigation.

(2) An order for costs and expenses under *subsection (1)* is in addition to and not instead of any fine or other penalty the court may impose.

45 (3) Where an employer or other person is convicted of an offence under employment legislation pursuant to an examination of any books, documents or other records produced to the Director in accordance with *section 42*, the court may, on the application of the Director, direct that the employer or other person the subject of a

requirement under *section 42(2) or (3)*, as the case may be, shall be liable, to such extent as the court may direct, to repay the Director the expenses of and incidental to the examination.

Fixed payment notices.

61.—(1) Where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under *section 32* or *section 49(3)* (inserted by this Act) of the Industrial Relations Act 1946 and is liable to summary prosecution by the Director, the officer shall give to the person a notice (in this Act referred to as a “fixed payment notice”) in the prescribed form stating that—

- (a) the person is alleged to have committed the offence concerned,
- (b) the person may during the period of 21 days beginning on the date of the notice make to the Director at the address specified in the notice a payment of €500 or such other amount as may be prescribed, being an amount of not less than €500 and not more than €1,000, accompanied by the notice,
- (c) a prosecution of the person to whom the notice is given in respect of the alleged offence will not be instituted during the period of 21 days beginning on the date of the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted, and
- (d) where the person makes payment to the Director pursuant to the notice, the person shall be included in the list compiled by the Director under *section 62* which list may be published in whole or in part in accordance with that section.

(2) Where a fixed payment notice is given under *subsection (1)*—

- (a) the person to whom it applies may, during the period of 21 days beginning on the date of the notice, make to the Director at the address specified in the notice the payment specified in the notice and the payment shall be accompanied by the notice,
- (b) the Director may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstance by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under employment legislation the onus of proving that a payment pursuant to a fixed payment notice has been made lies on the defendant.

(4) Different amounts may be prescribed for different offences to which this section applies subject to the maximum amount specified in *subsection (1)(b)*.

(5) Payments made under this section shall be disposed of in a manner determined by the Director subject to the prior consent of the Minister and the Minister for Finance.

5 (6) This section is without prejudice to any entitlement of any employee under employment legislation.

62.—(1) The Director shall compile a list of names and addresses of the following persons, together with a description of their trade, business or profession and the particulars specified in *subsection (2)*: Director may publish information respecting certain persons.

10 (a) every person on whom a fine or other penalty was imposed by a court under employment legislation;

(b) every person who makes payment to the Director pursuant to a fixed payment notice under *section 61*.

15 (2) The list compiled under *subsection (1)* shall specify, in relation to each person named in the list, any particulars the Director considers appropriate in respect of the following:

(a) the matter occasioning any fine or penalty imposed on the person by the court and the amount or nature of the penalty;

(b) the matter occasioning the fixed payment notice.

20 (3) The Director may, at any time and in the form or manner he or she considers appropriate, publish or cause to be published all or any part of the list compiled under *subsection (1)*.

PART 7

REPEALS AND AMENDMENTS

25 63.—(1) The Acts specified in *Part 1 of Schedule 4* are repealed to the extent specified in *column (3)*. Repeals and revocations.

(2) The statutory instruments specified in *Part 2 of Schedule 4* are revoked to the extent specified in *column (3)*.

30 64.—The Acts specified in *Parts 1 and 2 of Schedule 5* are amended as indicated in those Parts. Consequential amendment of certain enactments.

35 65.—(1) Where, before the commencement of this Act, any legal proceedings are pending under a provision of employment legislation (other than the Employment Permits Acts 2003 and 2006) to which the Minister is or was the plaintiff or the prosecutor, the name of the Director shall be substituted in those proceedings for that of the Minister, or added in those proceedings, as may be appropriate, and those proceedings shall not abate by reason of that substitution or addition. Savings and transitional provisions.

40 (2) Where, immediately before the commencement of this Act, any legal proceedings are pending under a provision of employment legislation to which the Minister is a defendant, the Director shall not be substituted for the Minister in those proceedings notwithstanding the relevant amendment of that provision.

PART 8

MISCELLANEOUS

Provisions relating to winding-up and bankruptcy.

66.—(1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound-up, to be paid in priority to all other debts, all compensation payable by the company to an employee by virtue of any decision or determination, as the case may be, specified in *subsection (3)*, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act. 5 10

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by the bankrupt or arranging debtor, as the case may be, to an employee by virtue of any decision or determination, as the case may be, specified in *subsection (3)*, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided under that Act. 15 20

(3) For the purposes of *subsections (1) and (2)*, “decision or determination” means—

- (a) a decision by a rights commissioner under subsection (5)(b) of section 55M (inserted by Part 14 of the Health Act 2007) of the Health Act 2004 or a determination by the Labour Court under subsection (15)(a) of that section, 25
- (b) a decision by a rights commissioner under section 28(2)(b) of the Safety, Health and Welfare at Work Act 2005 or a determination by the Labour Court under section 29(1) of that Act, and 30
- (c) a decision by a rights commissioner under *paragraph 1(2)(b) of Schedule 2* or a determination by the Labour Court under *paragraph 2(1) of that Schedule*.

SCHEDULE 1

Section 3.

EMPLOYMENT LEGISLATION

PART 1

ACTS

- 5 Carer's Leave Act 2001
- Employees (Provision of Information and Consultation) Act 2006
- Employment Law Compliance Act 2008*
- Employment Permits Acts 2003 and 2006
- Industrial Relations Acts 1946 to 2004 (in so far as those Acts relate to employment regulation orders and registered employment agreements)
- 10 Minimum Notice and Terms of Employment Acts 1973 to 2005
- National Minimum Wage Act 2000
- Organisation of Working Time Act 1997
- 15 Payment of Wages Act 1991
- Protection of Employees (Employers' Insolvency) Acts 1984 to 2004
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employment Acts 1977 to 2007
- 20 Protection of Young Persons (Employment) Act 1996
- Redundancy Payments Acts 1967 to 2007
- Terms of Employment (Information) Acts 1994 and 2001
- Transnational Information and Consultation of Employees Act 1996
- Unfair Dismissals Acts 1977 to 2007

- 25
- PART 2
- STATUTORY INSTRUMENTS
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)
- 30 European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (S.I. No. 494 of 2004)
- European Communities (European Public Limited – Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)
- 35 European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)

REDRESS FOR CONTRAVENTION OF *section 51**Complaints to rights commissioner.*

1. (1) An employee (or in the case of an employee who has not reached the age of 18 years, his or her parent or guardian) may present a complaint to a rights commissioner that his or her employer has contravened *section 51(4)* in relation to the employee and it shall not be necessary for the employee to have at least one year's continuous service with the employer concerned in order to present such complaint. 5

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall— 10

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

(b) give a decision in writing in relation to it, and 15

(c) notify the parties of that decision.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded; 20

(b) require the employer to take a specified course of action;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977, 25

and the references in *clauses (b)* and *(c)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership. 30

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates. 35

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause. 40

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister. 45

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner.

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

5 (9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeals from decisions of rights commissioner.

10 2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

15 (2) An appeal under this paragraph shall be initiated by the party concerned giving, within 42 days (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, 20 a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

25 (3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

30 (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;

(b) the times and places of hearings of such appeals;

(c) the representation of the parties to such appeals;

35 (d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under *subparagraph (2)*, and

(f) any matters consequential on, or incidental to, the foregoing matters.

40 (5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

45 (6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

3. (1) The Labour Court shall, on the hearing of any appeal referred to it under *paragraph 2*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation. 5

(2) Any person who, upon examination on oath or affirmation authorised under *subparagraph (1)*, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true commits an offence. 10

(3) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and—

(a) to give evidence in relation to any matter appealed to the Labour Court under *paragraph 2*, or 15

(b) to produce any document specified in the notice relating to the matter in the person's possession or power.

(4) A person to whom a notice under *subparagraph (3)* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates commits an offence. 20

(5) A witness in a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court. 25

(6) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision. 30

(7) The bringing of a complaint before the Labour Court under *subparagraph (6)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court. 35

(8) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (7)*. 40

(9) In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that *section 51(4)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned. 45

(10) If a penalisation of an employee, in contravention of *section 51(4)*, constitutes a dismissal of the employee within the meaning of 50

the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the employee in respect of that penalisation both under this Schedule and under those Acts.

Enforcement of determinations of Labour Court.

5 4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- 10 (a) the employee concerned,
- (b) with the consent of the employee, any trade union of which the employee is a member, or
- 15 (c) the Director, if he or she considers that there are exceptional circumstances which make it appropriate for him or her to make the application,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

20 (2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where

25 such an appeal is abandoned, be read as references to the date of such abandonment.

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to

30 pay to the employee concerned interest on the compensation at the rate for the time being fixed by the Minister for the purposes of section 4(2) of the Prompt Payment of Accounts Act 1997 under section 10 of that Act for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately

35 before the day on which the order of the Circuit Court is complied with.

(4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which

40 the employer concerned ordinarily resides or carries on any trade, business or occupation.

SCHEDULE 3

STATUTORY EMPLOYMENT RECORDS

1. Records required under section 49(1) of the Industrial Relations Act 1946.
2. Records required under section 51(1) of the Industrial Relations Act 1990. 5
3. Particulars of wages and deductions from wages of employees for the purposes of complying with section 4 of the Payment of Wages Act 1991.
4. Particulars of the terms of employment of each employee for the purposes of complying with section 3 of the Terms of Employment (Information) Act 1994. 10
5. Records required under section 15 of the Protection of Young Persons (Employment) Act 1996.
6. Records required under section 25 of the Organisation of Working Time Act 1997. 15
7. Records required under section 22 of the National Minimum Wage Act 2000.
8. Records required under section 31 of the Carer's Leave Act 2001. 20
9. Records required under—
 - (a) section 57 of the Redundancy Payments Act 1967,
 - (b) section 18 of the Protection of Employment Act 1977,
 - (c) section 8 of the Protection of Employees (Employers' Insolvency) Act 1984. 25

REPEALS AND REVOCATIONS

PART 1

REPEALS

5	Number and year (1)	Short title (2)	Extent of repeal (3)
	No. 26 of 1946	Industrial Relations Act 1946	Sections 51 and 52
10	No. 14 of 1969	Industrial Relations Act 1969	Section 12
	No. 15 of 1976	Industrial Relations Act 1976	Section 7
	No. 7 of 1977	Protection of Employment Act 1977	Sections 17 and 18(3) and (4)
15	No. 19 of 1990	Industrial Relations Act 1990	Sections 50, 51(2) and (3), 52 and 55
	No. 25 of 1991	Payment of Wages Act 1991	Section 9
20	No. 16 of 1996	Protection of Young Persons (Employment) Act 1996	Sections 15(2), 17, 22, 23 and 25
	No. 20 of 1996	Transnational Information and Consultation of Employees Act 1996	Section 17(1) and 18(4)
25	No. 20 of 1997	Organisation of Working Time Act 1997	Sections 8, 25(3) and (4), 26 and 36(4)
	No. 5 of 2000	National Minimum Wage Act 2000	Sections 22(2) and (3), 33, 36 and 48
	No. 19 of 2001	Carer's Leave Act 2001	Sections 24, 32 and 33
30	No. 45 of 2001	Protection of Employees (Part-Time Work) Act 2001	Section 15
	No. 7 of 2003	Employment Permits Act 2003	Section 2(13) and (14)
	No. 29 of 2003	Protection of Employees (Fixed-term Work) Act 2003	Sections 13 and 18
35	No. 9 of 2006	Employees (Provision of Information and Consultation) Act 2006	Section 18 and Schedule 3
	No. 16 of 2006	Employment Permits Act 2006	Sections 26, 33, 35 and 37 and Schedule 2

PART 2

REVOCATIONS

Number and year (1)	Citation (2)	Extent of revocation (3)	
S.I. No. 473 of 2001	Organisation of Working Time (Records) (Prescribed Forms and Exemptions) Regulations 2001	Regulation 7	5
S.I. No. 623 of 2006	European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006	Schedule 2	10
S.I. No. 259 of 2007	European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007	Schedule 2	15

CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENT OF EMPLOYMENT PERMITS ACT 2003

Item (1)	Provision affected (2)	Amendment (3)
1	Section 2	<p>(a) In subsection (3)(a), substitute “€5,000” for “€3,000”.</p> <p>(b) In subsection (8), substitute “€5,000” for “€3,000”.</p>

PART 2

AMENDMENT OF EMPLOYMENT PERMITS ACT 2006

Item (1)	Provision affected (2)	Amendment (3)
1	New section 10A	<p>Insert the following new section after section 10:</p> <p>“Failure by employer to comply with terms and conditions of employment permit.”</p> <p>10A.—An employer who without reasonable excuse fails to comply with the terms and conditions (including remuneration) of employment in accordance with an employment permit is guilty of an offence.”.</p>
2	Section 22	<p>Substitute the following for section 22:</p> <p>“Authorised officers.</p> <p>22.—(1)(a) The Minister may appoint in writing such and so many of his or her officers to be authorised officers for the purposes of all or any of the provisions of this Act or the Act of 2003 and such appointment may be specified to be for a fixed period.</p> <p>(b) A person appointed under paragraph (a) shall, on appointment, be given a certificate of his or her appointment, issued by the Minister and shall, when performing any function or exercising any power conferred on him or her by this section, produce the certificate of appointment, or a copy of it if requested to do so by a person affected by the performance of the function or the exercise of the power, as the case may be.</p> <p>(c) An appointment under paragraph (a) as an authorised officer shall cease—</p> <p style="padding-left: 40px;">(i) if the Minister revokes the appointment,</p> <p style="padding-left: 40px;">(ii) if the appointment is for a fixed period, at the end of that period, or</p> <p style="padding-left: 40px;">(iii) if the person appointed ceases to be an officer of the Minister.</p>

Item (1)	Provision affected (2)	Amendment (3)	
		<p>(d) An authorised officer appointed under paragraph (a) may for the purpose of obtaining any information which may be required in relation to a matter under investigation under this Act or the Act of 2003 exercise all or any of the powers which may be conferred on an authorised officer under PART 4 of the <i>Employment Law Compliance Act 2008</i>.</p> <p>(2)(a) The Director shall, as required by the Minister and subject to such terms and conditions as the Minister may specify from time to time, arrange for the Director and one or more than one authorised officer of the Director to inspect and examine the books, documents or records of any employer for the purposes of ascertaining whether or not the employer is complying, or has complied, with all or any of sections 10A, 18, 19, 23, 24, 25 or 27 of this Act or section 2(1) or (2) of the Act of 2003.</p> <p>(b) The Director or an authorised officer appointed under paragraph (a) may, for the purposes of performing any of the functions specified in that paragraph, exercise all or any of the powers which may be conferred on an authorised officer under PART 4 of the <i>Employment Law Compliance Act 2008</i>.</p> <p>(c) Without prejudice to the generality of paragraph (a), the Director shall report to the Minister regarding the performance of the Director's functions under this subsection—</p> <p style="padding-left: 40px;">(i) at such intervals as the Minister may specify, and</p> <p style="padding-left: 40px;">(ii) from time to time as the Minister may otherwise require.</p> <p>(3)(a) For the purposes of securing compliance with this Act or the Act of 2003, and as soon as practicable after the commencement of the <i>Employment Law Compliance Act 2008</i>, the Minister, the Minister for Justice, Equality and Law Reform, the Commissioner of the Garda Síochána and the Director may enter into a cooperation agreement within the meaning of section 28 of the <i>Employment Law Compliance Act 2008</i>.</p> <p>(b) A cooperation agreement referred to in paragraph (a) shall include provision for the joint inspection of places of employment by authorised officers of the Director and members of the Garda Síochána and any other necessary and appropriate joint activities for the purposes of detecting and preventing any failure to comply with this Act or the Act of 2003 and for matters relating to such joint inspection and such other joint activities.</p> <p>(c) Section 28 of the <i>Employment Law Compliance Act 2008</i> applies to a cooperation agreement under this section.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p>
3	Section 27	<p>Substitute the following for section 27:</p> <p>“Records relating to employment.</p> <p>27.— (1) An employer shall keep and make available for inspection for the duration of the person's</p>	60

Item (1)	Provision affected (2)	Amendment (3)
5 10 15 20 25		<p>employment or for 3 years from the date on which the record concerned was created, whichever is the longer period—</p> <p>(a) in the case of every employee, a copy of a valid passport or other equivalent document issued by or on behalf of any authority recognised by the Government, which establishes a person's identity and nationality, and</p> <p>(b) in the case of an employee who is the holder of an employment permit—</p> <p>(i) a copy of the permit, and</p> <p>(ii) a record of the employment performed by the employee, the economic sector in which it is being performed and the duration of the employment.</p> <p>(2) An employer shall make any document or record referred to in subsection (1) available for inspection or examination to—</p> <p>(a) an authorised officer of the Minister, the Director or an authorised officer of the Director when exercising any of his or her powers under this Act, and</p> <p>(b) a member of the Garda Síochána.</p> <p>(3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.”.</p>
4 30 35 40 45	Section 32	<p>Substitute the following for section 32:</p> <p>“Penalties and proceedings for offences.</p> <p>32.—(1) A person guilty of an offence under section 10A, 18(2), 19(3), 23(4), 25 or 27 is liable—</p> <p>(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or</p> <p>(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.</p> <p>(2) A person guilty of an offence under section 24(2) is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.</p> <p>(3) Where an employer is convicted of an offence under section 10A, the court may also order the employer to pay to the employee concerned such compensation as it considers fair and reasonable in respect of that failure.</p> <p>(4)(a) Where a person is convicted of any of the offences referred to in subsections (1) and (2), the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Minister or the Director, as appropriate, the costs and</p>

Item (1)	Provision affected (2)	Amendment (3)	
		<p>expenses measured by the court incurred in relation to the investigation, detection and prosecution of the offence by—</p> <p>(i) the Minister, or</p> <p>(ii) in a case where section 22(2) applies, the Director.</p> <p>(b) An order for costs and expenses under paragraph (a) is in addition to and not instead of any fine or other penalty the court may impose.</p> <p>(5) Summary proceedings for an offence—</p> <p>(b) under this Act or the Act of 2003, may be brought and prosecuted by the Minister, or</p> <p>(c) in the case of section 2(3) of the Act of 2003 or section 10A, 18(2), 19(3), 23(4), 24(2), 25 or 27 of this Act, may be brought and prosecuted by the Director.”.</p>	<p>5</p> <p>10</p> <p>15</p>
5	Schedule 1	<p>Substitute the following for Schedule 1:</p> <p>“SCHEDULE 1</p> <p>ENACTMENTS OFFENCES UNDER WHICH FALL WITHIN <i>section 12(1)(c)</i></p> <p>Employees (Provision of Information and Consultation) Act 2006</p> <p>Employment Agency Act 1971</p> <p><i>Employment Law Compliance Act 2008</i></p> <p>Carer’s Leave Act 2001</p> <p>Industrial Relations Acts 1946 to 2004</p> <p>Minimum Notice and Terms of Employment Acts 1973 to 2005</p> <p>National Minimum Wage Act 2000</p> <p>Organisation of Working Time Act 1997</p> <p>Payment of Wages Act 1991</p> <p>Protection of Employees (Employers’ Insolvency) Acts 1984 to 2004</p> <p>Protection of Employees (Fixed-Term Work) Act 2003</p> <p>Protection of Employees (Part-Time Work) Act 2001</p> <p>Protection of Employment Acts 1977 to 2007</p> <p>Protection of Young Persons (Employment) Act 1996</p> <p>Redundancy Payments Acts 1967 to 2007</p> <p>Safety, Health and Welfare at Work Act 2005</p> <p>Terms of Employment (Information) Acts 1994 and 2001</p> <p>Transnational Information and Consultation of Employees Act 1996</p> <p>Unfair Dismissals Acts 1977 to 2007.”.</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>



**AN BILLE UM CHOMHLÍONADH AN DLÍ FOSTAÍOCHTA
2008
EMPLOYMENT LAW COMPLIANCE BILL 2008**

**MEABHRÁN MÍNITHEACH AGUS AIRGEADAIS
EXPLANATORY AND FINANCIAL MEMORANDUM**

Purpose of Bill

The purpose of the Bill is to secure better compliance with employment legislation in accordance with provisions of PART 2, Sections 11 to 16 of “**TOWARDS 2016**” — the 10-year Framework Social Partnership Agreement 2006-2015.

The main provisions of this Bill are—

- to establish a new statutory office of the Director of the National Employment Rights Authority (within the Department of Enterprise, Trade and Employment), dedicated to employment rights compliance, and with a tripartite Advisory Board;
- to strengthen inspection and enforcement powers and make other necessary provisions to secure compliance with employment legislation (including protection against penalisation of employees who claim their entitlements or redress where they are denied, or who *bona fide* report breaches of employment legislation to the Director, etc) in line with “state-of-the-art” provisions in Revenue, Social Welfare, Consumer Protection, etc., legislation;
- to specify the statutory employment records to be kept by employers for all employees and the high penalties for failure to do so or for other breaches of employment legislation;
- to foster increased co-operation at workplace level so as to safeguard employment rights;
- to support and enhance monitoring and inspection activity in relation to compliance with the Registered Employment Agreement in the electrical contracting industry;
- to provide for exchanges of information between statutory enforcement authorities so as to facilitate Joint Investigations of employments suspected of contravening the law;
- to strengthen the powers of the Minister for Enterprise, Trade and Employment to initiate investigations and publish the outcomes in cases of public interest;

- to provide for involvement of labour inspectors, for the first time, in the enforcement of provisions of the Employment Permits Acts 2003 and 2006 and to strengthen those Acts as regards records and other obligations of employers.

The Bill comprises 8 Parts (66 sections) and 5 Schedules.

Provisions of Bill

PART 1 — PRELIMINARY (Sections 1 to 5)

Short title and collective citation.

Section 1 is a standard feature. It gives the convenient Short Title of the Bill when enacted, for ease of reference, and provides for the referencing of the Bill when enacted together with the Acts listed in Part 1 of *Schedule 1* to the Bill as the Employment Legislation Acts 1946 to 2008. The references in the Bill to “employment legislation” mean legislation under the aegis of the Minister for Enterprise, Trade and Employment only.

Commencement.

Section 2 provides that the full Bill will come into operation one month after it is signed into law by the President.

Interpretation.

Section 3 defines terms and expressions used throughout the Bill so as to avoid unnecessary verbiage in the rest of the Bill. (*Section 34* defines certain terms and expressions for the purposes of *Part 4* of the Bill).

Regulations.

Section 4 makes standard provision for the making of Ministerial Regulations under the Bill.

Expenses.

Section 5 is a standard provision for the Exchequer to bear the cost of administering the Bill when enacted.

PART 2 — NATIONAL EMPLOYMENT RIGHTS AUTHORITY (Sections 6 to 31)

Establishment of National Employment Rights Authority.

Section 6 provides for the establishment, on a statutory basis, of the National Employment Rights Authority dedicated to promoting and ensuring compliance with employment legislation.

Establishment of office of Director of National Employment Rights Authority.

Section 7 establishes the statutory office of Director of the National Employment Rights Authority as a constituent part of that Authority.

Director of National Employment Rights Authority.

Section 8 provides for the appointment, on a statutory basis, by the Minister for Enterprise, Trade and Employment, of the Director of the National Employment Rights Authority.

Terms and conditions of appointment of Director.

Section 9 deals with the terms and conditions of appointment of the Director of the National Employment Rights Authority, sets a limit of 10 years on such appointment and makes provision to guard against conflict of interests arising in the 12 months following cesser of appointment.

Superannuation.

Section 10 makes standard provision in relation to the superannuation of the Director of the National Employment Rights Authority and staff.

Resignation, suspension, removal and disqualification of Director. Membership of either House of the Oireachtas, European Parliament or local authority.

Section 11 provides on standard lines for the resignation, suspension, removal and disqualification of the Director of the National Employment Rights Authority while *Section 12* is a standard disqualification of any public representatives from being the Director.

Acting Director.

Section 13 makes standard provision for the appointment by the Minister for Enterprise, Trade and Employment of an Acting Director of the National Employment Rights Authority, for a period not exceeding 12 months, in case of need (i.e. during incapacity, absence or suspension of the Director, or while the office of Director is vacant).

Functions of Director.

Section 14 comprehensively sets out the functions of the Director of the National Employment Rights Authority.

Delegation of functions of Director.

Section 15 makes standard provision for the delegation of functions by the Director of the National Employment Rights Authority to his or her staff (other than the power to delegate).

Ministerial policy directions.

Section 16 is a standard provision for Ministerial policy directions to be given in relation to statutory bodies under their aegis.

Obligation to consult with Director.

Section 17 is necessary to ensure that the Director of the National Employment Rights Authority, charged with enforcing employment legislation, is formally consulted by the Minister for Enterprise, Trade and Employment about any proposed legislation providing for any new enforcement or other functions to be conferred on the Director.

Power to engage consultants and advisers.

Section 18 gives clear power to the Director of the National Employment Rights Authority to engage such consultants and advisers as he or she considers to be necessary or expedient for the performance of his or her functions, subject to the standard controls applicable to public sector engagement of consultants and advisers.

Sections 19 to 22 deal with the tripartite Advisory Board being established on a statutory basis to advise the Director of the National Employment Rights Authority .

Establishment and functions of advisory board.

Section 19 enables the Minister for Enterprise, Trade and Employment to establish the Advisory Board on a statutory basis and sets out its functions.

Membership of advisory board and terms and conditions of membership.

Section 20 sets the membership of the Advisory Board at 10 persons, comprising an independent Chairperson, 3 persons representative of employers, 3 persons representative of employees and 3 other persons who are suitably qualified and experienced for membership of the Advisory Board.

Chairperson of advisory board.

Section 21 provides for the Chairperson to chair meetings of the Advisory Board or, in his or her absence, one of the Members present chosen by them, or, where the office of Chairperson is vacant, such Member as the Minister for Enterprise, Trade and Employment may designate to chair meetings until the vacancy is filled.

Annual report and information to the Minister.

Section 22 requires the Chairperson of the Advisory Board to make an Annual Report to the Minister for Enterprise, Trade and Employment.

Strategy statement.

Section 23 is designed to give a multi-annual strategic direction to the work of the Director of the National Employment Rights Authority.

Work programme.

Section 24 is designed to ensure that the Director of the National Employment Rights Authority deploys staffing and other resources to good effect through definite well-planned work programmes.

Subsection (4) specifically provides for any necessary major updating of a work programme in the course of the year to which it relates.

Accountability of Director before Oireachtas Committees.

Section 25 ensures, on standard lines, that the Director of the National Employment Rights Authority is accountable to Committees of the Oireachtas.

Director's annual report.

Section 26 requires, on standard lines, the Director of the National Employment Rights Authority, to make an Annual Report to the Minister for Enterprise, Trade and Employment and such other reports to the Minister as the Minister may require or as the Director considers appropriate.

Disclosure of certain information.

Section 27 permits the Director of the National Employment Rights Authority, in the performance of his or her functions for securing compliance with employment legislation, to share certain employment-related information with other statutory enforcement authorities.

Cooperation between Director and official agencies.

Section 28 permits extensive cooperation between the Director of the National Employment Rights Authority and other statutory enforcement authorities so as to enable the Director to detect and deal effectively with breaches of employment legislation.

Disclosure of information relating to offences.

Section 29 enables the Director of the National Employment Rights Authority and other statutory enforcement authorities to advise each other of suspected offences under their respective remits which come to the notice of any one of them.

Prohibition on unauthorised disclosure of information.

Section 30 makes standard provision to prevent unauthorised disclosure of information available to the Director of the National Employment Rights Authority, staff and other persons engaged by him or her, and for any party injured by unauthorised disclosure to obtain relief or damages via Court proceedings.

Non-application of Freedom of Information Act 1997 and Data Protection Act 1988 to certain records held or created by Director.

Section 31 is designed to protect investigations and enforcement activity by the Director of the National Employment Rights Authority and staff from premature disclosure.

PART 3 — COMPLIANCE (Sections 32 and 33)

Notices to be displayed.

Section 32 requires all employers to display clearly-worded notices in or at their workplaces advising employees of their entitlements under employment legislation and how to seek redress for the denial of any such entitlements, as well as how to contact the Director of the National Employment Rights Authority for information as to any such entitlement or to bring non-compliance with such legislation to notice.

General duty to resolve at workplace level disputes or differences.

Section 33 gives effect to the principle of compliance, namely, that employers and employees should endeavour to achieve resolution of disputes or differences concerning employment legislation at workplace level where possible.

PART 4 — ENFORCEMENT (Sections 34 to 49)

Interpretation (Part 4).

Section 34 defines certain terms and expressions for the purposes of Part 4 only.

Authorised officers.

Section 35 empowers the Director of the National Employment Rights Authority to formally appoint authorised officers for the purposes of enforcing employment legislation generally and to decide

the duration of their appointment. The section makes it an offence for anyone to obstruct, impede or assault or impersonate an authorised officer, subject to the penalties provided for in *section 59(1)*.

Right of entry and inspection, examination and investigation by authorised officers.

Section 36 provides necessary comprehensive up-to-date powers for authorised officers of the Director of the National Employment Rights Authority in relation to employment legislation generally, taking account of state-of-the-art provisions in Revenue, Social Welfare, Consumer Protection, etc., legislation.

Search warrants.

Section 37 makes necessary provision for the grant of a warrant by a judge of the District Court for named authorised officers of the Director of the National Employment Rights Authority (accompanied by other authorised officers and members of the Garda Síochána if necessary) within 28 days to enter premises and remove and retain relevant records in relation to the employment of persons.

Director may require persons to give evidence or produce documents.

Section 38 empowers the Director of the National Employment Rights Authority to require specific persons to give evidence or produce documents concerning matters which the Director wishes to pursue for the purposes of securing compliance with employment legislation.

Concealing facts disclosed by documents.

Section 39 makes it an offence for any person to falsify, conceal, destroy or otherwise dispose of any relevant record so as to thwart an investigation by the Director of the National Employment Rights Authority of a suspected offence under employment legislation.

Authorised officer may seek court order for production of evidential material.

Section 40 empowers a judge of the District Court to order the production of material to authorised officers of the Director of the National Employment Rights Authority and access to it by them, for the purposes of the investigation of a suspected indictable offence under employment legislation.

Investigations by Director on behalf of Minister.

Section 41 provides a necessary power for the Minister for Enterprise, Trade and Employment, in the public interest, to require the Director of the National Employment Rights Authority to undertake an investigation of a particular employment or particular classes of employments in relation to which the Minister reasonably believes that there is or was a serious risk of non-compliance with employment legislation.

Power of Director to require production of certain documents, books or other records.

Section 42 obliges employers to provide required information to the Director of the National Employment Rights Authority to enable him or her to establish whether or not employment legislation is being or has been complied with in relation to a particular employee or particular employees.

Requirement on examiner, administrator, receiver or liquidator to produce certain records for examination.

Section 43 is necessary to safeguard employees' entitlements under employment legislation. It empowers the Director of the National Employment Rights Authority to check employers' records for compliance with that legislation, notwithstanding the intervention of formal examinership, receivership or liquidation under the Companies Acts, or formal administration under the Insurance (No. 2) Act 1983 (No. 29).

Director may seek certain information from registered owners of motor vehicles.

Section 44 is designed to establish who is the relevant employer where a motor vehicle is used, under a lease or hiring agreement, for or in connection with the employment of persons by the lessee or hirer. The Director of the National Employment Rights Authority can already access and inspect the statutory motor vehicle licensing records so as to ascertain who is listed for the time being as the registered-owner of the motor vehicle concerned.

Compliance with registered employment agreement in electrical contracting industry.

Section 45 makes provision, pursuant to Section 14.1 of Part 2 of "**TOWARDS 2016**", designed to support and enhance monitoring and inspection activity in relation to compliance with the Registered Employment Agreement in the electrical contracting industry.

Administrative cooperation with competent authorities of other states in certain matters relating to employment.

Section 46 empowers the Minister for Enterprise, Trade and Employment or the Director of the National Employment Rights Authority, with the approval of the Minister, to enter into an administrative arrangement with the competent authorities of other States for the purposes of information supply or other assistance to facilitate enforcement of employment legislation in the State.

Compliance notices.

Section 47 is designed to secure prompt payment of moneys owing to employees under employment legislation. It empowers the Director of the National Employment Rights Authority or an authorised officer of the Director to issue a Compliance Notice to any employer requiring him or her to pay any moneys believed to be owing to any employee under employment legislation. The employer concerned is entitled to challenge such a Compliance Notice directly with the Director or to appeal against the Director's decision to a judge of the District Court for determination.

Service of notices.

Section 48 makes standard provision for the service of notices under employment legislation generally, in lieu of ad hoc provisions enacted over decades.

Enforcement orders.

Section 49 is needed to deal with urgent and significant cases of non-compliance with employment legislation. It empowers the Director of the National Employment Rights Authority to apply to the High Court for an Order requiring the employer concerned to comply with the relevant provision.

PART 5 — STRENGTHENING OBLIGATIONS OF
EMPLOYERS AND RIGHTS OF EMPLOYEES
(Sections 50 to 54)

Protections for persons reporting breaches.

Section 50 provides immunity for any persons who *bona fide* report breaches of employment legislation to the Director of the National Employment Rights Authority or an officer of the Director, the Minister for Enterprise, Trade and Employment or an officer of the Minister or to a member of the Garda Síochána. As a corollary, subsection (3) makes it an offence for anyone to report in bad faith to any of those persons.

Protection of employees from penalisation.

Section 51 (with *Schedule 2*) provides comprehensive protection for employees against penalisation by their employers for *bona fide* reporting under *section 50* breaches of employment legislation, whether by their employer or by any other employer, or for seeking their entitlements or exercising rights under employment legislation generally, or giving evidence in Court proceedings relating to such breaches. As a corollary, *Schedule 4* to the Bill repeals existing limited protective provisions in a number of enactments.

Statutory employment records.

Section 52 makes comprehensive provision for statutory employment records to be kept and maintained by employers so as to establish compliance with employment legislation in respect of all of their employees. *Schedule 3* lists the relevant substantive records requirements in existing Acts. Where there is failure to keep such records, the onus will be on the employer or other person concerned to prove in Court proceedings that the relevant provision of employment legislation was complied with as regards the employees concerned.

Those records requirements are supplemented by those in section 27 of the Employment Permits Act 2006 (No. 16) as inserted by *Schedule 5* to the Bill.

Codes of practice for purposes of section 52, etc.

Section 53 is designed to take account of evolving best practices in record-keeping by electronic means by empowering the Director of the National Employment Rights Authority to prepare and publish Codes of Practice giving practical guidance to employers as to how to comply with the relevant statutory provisions referred to in *section 52*.

Duty of employers to provide promptly certain documents and property to employees on cessation of employment.

Section 54 is primarily aimed at securing the prompt provision to former employees of all documents needed to allow them to seek further employment without delay after their employment is terminated by their employer, recognising that non-provision of employment-related documents, etc., could severely prejudice persons in seasonal or casual employment. The section also requires the prompt return of other personal documents or belongings to the former employees.

PART 6 — PROCEEDINGS AND PENALTIES FOR
OFFENCES AND FIXED PAYMENT NOTICES
(Sections 55 to 62)

Proceedings for offences.

Section 55 makes standard provision for the Director of the National Employment Rights Authority to prosecute summary offences under the Bill when enacted.

Offences by bodies corporate.

Section 56 makes standard provision, for the purposes of employment legislation generally, to ensure that the responsible officer of a body corporate which committed an offence under employment legislation is also guilty of that offence.

Summary trial of persons indicted.

Section 57 is a standard technical provision to allow for the summary trial by the District Court of any person indicted for an offence under employment legislation where the District Court considers the offence to be a minor offence fit for trial summarily, and neither the accused nor the Director of Public Prosecutions dissents.

Evidence through television link.

Section 58 extends for the purposes of employment legislation generally section 35 of the Employment Permits Act 2006 (No. 16), permitting the Court concerned to accept evidence via a television link from any person (other than the accused) who is outside the State.

Fines and penalties.

Section 59 specifies the maximum possible fines and custodial sentences for offences under this Bill when enacted, namely,

- (a) on summary conviction, a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.

Consequential increases in penalties in other employment legislation will be made in textual amendments to be inserted in *Schedule 5* to the Bill at Committee Stage in the Houses of the Oireachtas.

Convicted persons liable for costs and expenses of proceedings and investigation.

Section 60 empowers the Court to order a person convicted of an offence under employment legislation to pay the costs and expenses (as measured by the Court) of the Director of the National Employment Rights Authority in the investigation, detection and prosecution of the offence, that is in addition to and not in lieu of any fine or other penalty the Court may impose for that offence.

Fixed payment notices.

Section 61 provides for the issue of fixed payment notices (“on-the-spot-fines”) for a summary offence under *section 32* (certain notices to be displayed by employers in or at workplaces) of the Bill or *section 49(3)* (notices to be displayed by employers advising employees of proposals for any Employment Regulation Order affecting their employment) of the Industrial Relations Act 1946.

The amount of the fixed payment is set at €500 in the Bill unless and until the Minister makes Regulations to prescribe a higher amount which cannot exceed €1,000.

Director may publish information respecting certain persons.

Section 62 empowers the Director of the National Employment Rights Authority to publish the names and addresses of persons convicted by the Court of an offence under employment legislation and persons who make a fixed payment under *section 61* of the Bill when enacted in respect of an offence.

PART 7 — REPEALS AND AMENDMENTS (Sections 63 to 65)

Repeals and revocations.

Section 63 provides for the repeal or revocation of the provisions of enactments listed in *Schedule 4* to the Bill.

Consequential amendment of certain enactments.

Section 64 provides for the amendments to the Employment Permits Acts 2003 and 2006 listed in *Schedule 5* to the Bill.

The amendments to the Employment Permits Act 2003 are required to up-date the maximum fine on summary conviction for offences from €3,000 to €5,000.

The Employment Permits Act 2006 is being strengthened by the following amendments:

- insertion of new section 10A to penalise employers who do not grant the terms and conditions of employment permits;
- replacement of section 22 to include the Director of the National Employment Rights Authority and his or her authorised officers in enforcing provisions of the Employment Permits Acts as well as officers of the Minister as appropriate, as at present. (All will have the enhanced comprehensive inspection, etc., powers being provided in the Bill for authorised officers of the Director, for the purposes of securing better compliance with employment legislation generally, including the Employment Permits Acts.) Provision is also made for quadrilateral agreements between the Ministers for Enterprise, Trade and Employment and Justice, Equality and Law Reform, the Director of the National Employment Rights Authority and the Commissioner of the Garda Síochána for joint investigations and other joint activities in relation to the Acts;
- replacement of section 27 (so as to impose clearer records requirements in relation to all employees) and section 32 (so as to empower the Court on conviction of an employer for an offence under the Employment Permits Acts to order the employer to pay the costs and expenses (as measured by the Court) incurred by the Minister or Director in the investigation, detection and prosecution of the offence);
- replacement of Schedule 1 so as to show up-dated list of employment-related enactments conviction for an offence under which could result in refusal to grant an employment permit under the Act.

Savings and transitional provisions.

Section 65 is a standard technical provision to provide for the continuation after the commencement of the Bill when enacted of any legal proceedings in train under employment legislation before that commencement.

PART 8 — MISCELLANEOUS (Section 66)

Provisions relating to winding-up and bankruptcy.

Section 66 includes among the priority debts to be satisfied on the winding-up or bankruptcy of an employer moneys owing to any of his or her employees as redress for penalisation under the Health Act 2004, the Safety, Health and Welfare at Work Act 2005 or this Bill when enacted. Moneys owing to employees as redress under other enactments are already so included.

SCHEDULES TO THE BILL (5)

Schedule 1 lists the Acts and Statutory Instruments which come within the definition in section 3 of the Bill of “employment legislation” for the purposes of the Bill.

Schedule 2 provides redress for employees penalised under *section 51* of the Bill.

Schedule 3 lists the statutory employment records for the purposes of *section 52* of the Bill.

Schedule 4 lists the repeals or revocations of the provisions of existing enactments made by *section 63* of the Bill.

Schedule 5 lists the amendments to the Employment Permits Acts 2003 and 2006 made by *section 64* of the Bill.

Additional amendments, to further enactments, will be tabled by the Minister for Enterprise, Trade and Employment for consideration by the Houses of the Oireachtas.

Exchequer and Financial Implications

Exchequer provision has already been made for the establishment and staffing of the National Employment Rights Authority which is operating on a non-statutory basis from its Carlow headquarters. Estimated full-year costs [2008] are €13.763 million.

In summary, the Bill is intended to benefit low-paid and other vulnerable employees in particular, by securing vindication of their employment-related rights: this should have clear benefits in terms of alleviating poverty and preventing exploitation and distortion of competition from non-compliance with employment legislation, and generally improving relations in the workplace.

*An Roinn Fiontar, Tradála agus Fostaíochta,
Márta 2008.*