



**AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) (UIMH. 3),
2011
INDUSTRIAL RELATIONS (AMENDMENT) (NO. 3) BILL
2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citations, construction and commencement.
2. Definitions.
3. Repeals.

PART 2

REGISTERED EMPLOYMENT AGREEMENTS

4. Amendment of section 25 of Act of 1946.
5. Amendment of section 27 of Act of 1946.
6. Variation of registered employment agreements.
7. Amendment of section 29 of Act of 1946.
8. Amendment of section 32 of Act of 1946.
9. Exemption from obligation to pay rate of remuneration provided by registered employment agreement.

PART 3

EMPLOYMENT REGULATION ORDERS

10. Amendment of section 34 of Act of 1946.
11. Review of joint labour committees.
12. Employment regulation orders.
13. Enforcement of employment regulation orders.

[No. 84 of 2011]

14. Exemption from obligation to pay statutory minimum remuneration.
15. Amendment to Fifth Schedule to Act of 1990.
16. Consequential amendments.
17. Amendment of Protection of Employees (Employers' Insolvency) Act 1984.
18. Amendment to Terms of Employment (Information) Act 1994.

ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Companies Act 1963	1963, No. 33
Courts Act 1981	1981, No. 11
Employment Permits Act 2006	2006, No. 16
Employment Permits Acts 2003 and 2006	
Finance Act 2002	2002, No. 5
Industrial Relations Act 1946	1946, No. 26
Industrial Relations Act 1990	1990, No. 19
Industrial Relations Acts 1946 to 2004	
National Minimum Wage Act 2000	2000, No. 5
Organisation of Working Time Act 1997	1997, No. 20
Protection of Employees (Employers' Insolvency) Act 1984	1984, No. 21
Protection of Employees (Employers' Insolvency) Acts 1984 to 2004	
Taxes Consolidation Act 1997	1997, No. 39
Terms of Employment (Information) Act 1994	1994, No. 5
Terms of Employment (Information) Acts 1994 and 2001	
Unfair Dismissals Act 1977	1977, No. 10



AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) (UIMH. 3),
2011
INDUSTRIAL RELATIONS (AMENDMENT) (NO. 3) BILL
2011

BILL

entitled

5
10
15
AN ACT TO MAKE FURTHER AND BETTER PROVISION
FOR PROMOTING HARMONIOUS RELATIONS
BETWEEN WORKERS AND EMPLOYERS, TO AMEND
THE INDUSTRIAL RELATIONS ACTS 1946 TO 2004, TO
AMEND THE EMPLOYMENT PERMITS ACT 2006, THE
ORGANISATION OF WORKING TIME ACT 1997, THE
PROTECTION OF EMPLOYEES (EMPLOYERS'
INSOLVENCY) ACT 1984 AND THE TERMS OF EMPLOY-
MENT (INFORMATION) ACT 1994, AND TO PROVIDE
FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

20 **1.—(1)** This Act may be cited as the Industrial Relations
(Amendment) Act 2011.

Short title,
collective citations,
construction and
commencement.

(2) The Industrial Relations Acts 1946 to 2004 and this Act (other
than *sections 16, 17 and 18*) may be cited together as the Industrial
Relations Acts 1946 to 2011 and shall be construed together as one.

25 (3) The Employment Permits Acts 2003 and 2006 and *section*
16(1) may be cited together as the Employment Permits Acts 2003
to 2011 and shall be construed together as one.

30 (4) The Protection of Employees (Employers' Insolvency) Acts
1984 to 2004 and *section 17* may be cited together as the Protection
of Employees (Employers' Insolvency) Acts 1984 to 2011 and shall
be construed together as one.

35 (5) The Terms of Employment (Information) Acts 1994 and 2001
and *section 18* may be cited together as the Terms of Employment
(Information) Acts 1994 to 2011 and shall be construed together as
one.

(6) This Act shall come into operation on such day or days as the Minister for Jobs, Enterprise and Innovation may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

5

Definitions.

2.—In this Act—

“Act of 1946” means the Industrial Relations Act 1946;

“Act of 1990” means the Industrial Relations Act 1990.

Repeals.

3.—(1) Section 49(2) and section 58 of the Act of 1946 are repealed.

10

(2) Section 39 of the Act of 1990 is repealed.

PART 2

REGISTERED EMPLOYMENT AGREEMENTS

Amendment of section 25 of Act of 1946.

4.—Section 25 of the Act of 1946 is amended—

(a) by deleting the definition of “registered”, and 15

(b) by substituting the following definition for the definition of “registered employment agreement”:

“the expression ‘registered employment agreement’ means—

(a) in the case of an agreement registered before 20 the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, an employment agreement for the time being registered in the register, and

(b) in the case of an agreement registered after the 25 commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, an employment agreement for the time being registered in the register, the terms of which have been confirmed by order of the Minister under 30 section 27,

and the word ‘registered’ shall be construed accordingly.”.

Amendment of section 27 of Act of 1946.

5.—Section 27 of the Act of 1946 is amended—

(a) by substituting the following subsection for subsection (2):

“(2) Every application to register an employment 35 agreement shall be accompanied by—

(a) a copy of the agreement, and

(b) confirmation, in such form and accompanied by such documentation as the Court may specify,

that the parties to the agreement are substantially representative of the workers and employers in the class, type or group to which the agreement is expressed to apply.”,

5 (b) in subsection (3) by inserting the following paragraph after paragraph (a):

“(aa) that it is appropriate to do so having regard to the matters specified in subsection (3A).”,

(c) by inserting the following subsection after subsection (3):

10 “(3A) When considering whether it is appropriate to register an agreement under subsection (3), other than an agreement applying to a single employer, the Court shall have regard to the following:

15 (a) whether the parties to the agreement are substantially representative of the workers and employers in the sector in question, and in that regard the Court shall have particular regard to—

20 (i) the number of workers represented by the trade union party, and

(ii) the number of workers employed by the employer or the number of workers employed by employers represented by a trade union of employers,

25 in the class, type or group to which the agreement is expressed to apply,

(b) that the agreement will be binding on all workers and employers in the sector in question;

30 (c) the desirability of maintaining established arrangements for collective bargaining;

(d) the promotion of harmonious relations between workers and employers;

35 (e) the desirability of the avoidance of industrial unrest;

(f) the benefits of consultation between worker and employer representatives at enterprise and sectoral level;

40 (g) the experience of registration and variation of employment agreements in the sector in question;

(h) the potential impact on employment levels in the sector in question of registering an employment agreement;

45 (i) the desirability of agreeing and maintaining fair and sustainable rates of remuneration in the sector in question;

- (j) the desirability of maintaining competitiveness in the sector in question;
 - (k) the levels of employment and unemployment in the sector in question;
 - (l) the terms of any relevant national agreement relating to pay and conditions for the time being in existence; 5
 - (m) the general level of wages in comparable sectors, including where the sector in question is in competition with enterprises outside the State, the general level of wages in such comparable sectors in other relevant jurisdictions.”, 10
- (d) by inserting the following subsection after subsection (5):

“(5A) (a) Where, after the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, the Court registers an employment agreement, the Court shall forward a copy of the agreement to the Minister. 15

(b) As soon as practicable after receipt of a copy of the agreement, the Minister shall, where he or she is satisfied that subsections (1) to (5) have been complied with, and where he or she considers it appropriate to do so, by order confirm the terms of the agreement, from such date (on or after the date of the order) as the Minister shall specify in the order. 20 25

(c) Where the Minister is not satisfied that subsections (1) to (5) have been complied with, or where he or she considers that it is not appropriate to confirm the terms of the agreement, he or she shall— 30

(i) refuse to make an order to confirm the terms of the agreement, and

(ii) notify the Court in writing of his or her decision and the reasons for the decision. 35

(d) Every order under paragraph (b) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 40

(e) Nothing in this subsection shall affect the validity of an employment agreement registered before the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*.”, and 45

- (e) by inserting the following subsection after subsection (6): 50

“(7) A registered employment agreement may provide that an employer may apply to the Court under section 33A for an exemption from the obligation to pay the rate of remuneration provided by the agreement.”.

5 6.—The Act of 1946 is amended by substituting the following section for section 28:

Variation of registered employment agreements.

10 “28.—(1) Subject to this section, any party to a registered employment agreement may apply to the Court to vary the agreement in its application to any worker or workers to whom it applies.

15 (2) Where all parties to the registered employment agreement agree to vary the agreement in the terms of the proposed application, the Court shall consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard.

20 (3) After considering an application under subsection (2) and where it is satisfied that it is appropriate to do so having regard to the matters specified in subsection (3A) of section 27, the Court may, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

25 (4) Where a party to a registered employment agreement wishes to apply to the Court to vary the agreement, and the other party or parties to the agreement do not agree with the proposed variation, a party to the agreement may invoke the dispute resolution procedures contained in the agreement.

(5) Where the parties to the registered employment agreement have complied with subsection (4) and have failed to reach agreement, a party to the agreement may refer the dispute to the Labour Relations Commission for investigation.

30 (6) Following a referral of a dispute to the Labour Relations Commission under subsection (5), where the Commission has investigated the dispute and it has not been resolved, the Commission shall forward a report to the Court stating that it is satisfied that no further efforts on its part will advance the resolution of the dispute and, notwithstanding section 26 of the Industrial Relations Act 1990, the Commission shall request the Court to investigate the dispute.

40 (7) On receipt of a report under subsection (6), the Court shall consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard, and the Court shall issue a recommendation to the parties to the registered employment agreement setting out its opinion on the merits of the dispute and the terms on which it should be settled.

45 (8) Where, 6 weeks after the date on which a recommendation under subsection (7) has issued, the dispute has not been resolved, a party to the agreement may apply to the Court to vary the agreement in the terms of the Court’s recommendation.

50 (9) The Court shall consider an application under subsection (8) and shall hear all persons appearing to the Court to be interested and desiring to be heard, and after such consideration, where it is satisfied that it is appropriate to do so having regard to the matters set out in subsection (3A) of section 27, the Court

may, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

- (10) (a) Where, after the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, the Court makes an order varying an agreement (in this subsection referred to as a ‘variation order’) the Court shall forward a copy of the variation order to the Minister. 5
- (b) As soon as practicable after receipt of a copy of a variation order, the Minister shall, where he or she is satisfied that this section has been complied with, and where he or she considers it appropriate to do so, by order confirm the terms of the variation order, and the order shall have effect from such date (on or after the date of the order) as the Minister shall specify in the order. 10 15
- (c) Where the Minister is not satisfied that this section has been complied with, or where he or she considers that it is not appropriate to confirm the terms of the variation order, he or she shall— 20
- (i) refuse to make an order to confirm the terms of the variation order, and
- (ii) notify the Court in writing of his or her decision and the reasons for the decision.
- (d) Every order under paragraph (b) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 25 30
- (e) Nothing in this subsection shall affect the validity of an order varying a registered employment agreement made before the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*.”. 35

Amendment of
section 29 of Act of
1946.

7.—Section 29 of the Act of 1946 is amended—

- (a) by substituting the following subsections for subsection (2):

“(2) The Court may on its own initiative or on written application to it by an interested party and shall, at the request of the Minister, review a trade or business to which a registered employment agreement relates. 40

(2A) For the purposes of a review under subsection (2), the Court may commission a report in relation to the circumstances of the trade or business concerned and shall hear all persons appearing to the Court to be interested and desiring to be heard. 45

(2B) Following a review under subsection (2), the Court may where it is satisfied that it is appropriate to do so—

5 (a) having regard to the matters specified in subsection (3A) of section 27 and the findings contained in any report commissioned under subsection (2A), and

(b) having considered any submissions made by interested persons,

10 cancel the registration of an employment agreement if satisfied that there has been such substantial change in the circumstances of the trade or business to which it relates that it is undesirable to maintain registration.”,

and

15 (b) by inserting the following subsections after subsection (5):

20 “(6) The Court may cancel the registration of an employment agreement if it is satisfied that the trade union of workers or employer or trade union of employers who were parties to the agreement are no longer substantially representative of the workers or employers concerned.

25 (7) (a) Where, after the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, the Court cancels the registration of an employment agreement, the Court shall forward a copy of the cancellation to the Minister.

30 (b) As soon as practicable after receipt of a copy of the cancellation, the Minister shall, where he or she is satisfied that the relevant provisions of this section have been complied with, and where he or she considers it appropriate to do so, by order confirm the terms of the cancellation, from such date (on or after the date of the order) as the Minister shall specify in the order.

35 (c) Where the Minister is not satisfied that the relevant provisions of this section have been complied with, or where he or she considers that it is not appropriate to confirm the terms of the cancellation, he or she shall—

40 (i) refuse to make an order to confirm the terms of the cancellation, and

(ii) notify the Court in writing of his or her decision and the reasons for the decision.

45 (d) Every order under paragraph (b) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but

without prejudice to the validity of anything previously done thereunder.”.

Amendment of section 32 of Act of 1946.

8.—Section 32 of the Act of 1946 is amended—

(a) by substituting the following subsection for subsection (4):

“(4) If an employer fails to comply with an order under paragraph (b) of subsection (1) within 28 days from the date on which the terms of the order are communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

(a) the worker concerned (or, in the case of a worker who has not reached the age of 18 years, the worker’s parent or guardian with his or her consent),

(b) with the consent of the worker, any trade union of which the worker is a member, or

(c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to comply with the terms of the order.”,

and

(b) by inserting the following new subsections:

“(5) The reference in subsection (4) to an order of the Labour Court is a reference to such order 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 terms of the order are communicated to the parties shall, in a case where such an appeal is abandoned, be construed as references to the date of such abandonment.

(6) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the worker concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the order of the Labour Court is communicated to the parties and ending on the date of the order under this section.

(7) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.”.

9.—The Act of 1946 is amended in Part III by inserting the following new section after section 33:

Exemption from obligation to pay rate of remuneration provided by registered employment agreement.

5 “Exemption from obligation to pay rate of remuneration provided by registered employment agreement.

33A.—(1) Where a registered employment agreement provides that an employer may apply to the Court under this section, the Court may in accordance with this section exempt an employer from the obligation to pay the rate of remuneration provided by a registered employment agreement in respect of a worker or number of workers.

10 (2) An exemption under subsection (1) shall remain in force for such period, being not less than 3 months and not more than 24 months from the date on which the exemption is granted, as is specified in the exemption.

15 (3) The Court shall not grant an exemption to an employer under subsection (1) if the employer has been granted an exemption in respect of the same worker or workers under that subsection within the previous 5 years.

20 (4) An employer or employer’s representative with the employer’s consent may, in the manner and form approved by the Court, apply to the Court for an exemption under subsection (1).

25 (5) An application under subsection (4) shall be accompanied by—

30 (a) a current tax clearance certificate under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 in respect of the employer concerned, and

35 (b) such information, particulars and documentation as the Court may reasonably require for the purpose of determining whether an exemption under subsection (1) should be granted, in particular such information in relation to the employer, his or her business and the potential impact of an exemption, as the Court may direct.

40 (6) On receiving an application under subsection (4) the Court shall convene a hearing of parties to the application and shall give its decision on the application in writing to the parties.

45 (7) Subject to subsection (8) the Court shall not grant an exemption under subsection (1) unless it is satisfied that where the employer makes an application he or she has entered into an agreement with the majority of the workers or the representative of the majority of the workers in respect of whom the exemption is sought, whereby the workers or their representative consent to the employer making the application, and to abide by any decision on the application that the Court may make.

(8) Notwithstanding subsection (7), where the Court is not satisfied that the majority of the workers or their representatives consent to an application under that subsection, the Court may grant an exemption under subsection (1), provided the Court is satisfied that: 5

- (a) the employer has informed the workers concerned of the financial difficulties of the business and has attempted to come to an agreement with the workers concerned in relation to a reduction of the rate of remuneration provided by the registered employment agreement, 10
- (b) the employer is unable to maintain the terms of the registered employment agreement, and 15
- (c) were the employer compelled to comply with the terms of the registered employment agreement concerned there would be a substantial risk that— 20
 - (i) a significant number of the workers concerned would be laid off or made redundant, or
 - (ii) the sustainability of the employer's business would be significantly adversely affected. 25

(9) In considering whether to grant an exemption under subsection (1), the Court shall have regard to the following: 30

- (a) whether, if an exemption was granted, it would have an adverse effect on employment levels and distort competition in the sector to the detriment of employers not party to the application, who are also subject to the registered employment agreement concerned, 35
- (b) the long term sustainability of the employer's business, were such an exemption to be granted, and 40
- (c) any other matters the Court considers relevant.

(10) An exemption under subsection (1) shall specify:

- (a) the names and employment positions occupied by the workers to whom the exemption applies; 45
- (b) the duration of the exemption; and

5 (c) the minimum rates of remuneration to be paid to the worker or workers during the period of the exemption and the worker or workers shall be entitled to be paid at not less than that rate accordingly.

(11) Notwithstanding anything in this section, an exemption under subsection (1) shall not—

10 (a) specify an hourly rate of pay which is less than that declared by order for the time being in force under section 11 of the National Minimum Wage Act 2000, or

15 (b) reduce pension contributions paid by the employer on behalf of the worker or workers concerned.

20 (12) Where during the period of an exemption under this section a new worker replaces a worker to whom the exemption relates, the employer may pay the new worker the hourly rate of pay specified by the Court in respect of the former worker and shall, as soon as practicable, notify the Court in writing of the employment of the new worker.

25 (13) Where a contract between an employer and a worker specified in an exemption under subsection (1), provides for the payment of remuneration at more than the rate provided by such exemption, the contract shall, in respect of any period during which the exemption is in force, have effect as if the rate provided for by such exemption and applicable to such worker were substituted for the rate provided for by the contract.

35 (14) The Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

40 (15) The Court shall establish and maintain a register of all exemptions under this section and shall make the register available for examination by members of the public at such place and during such reasonable times as it thinks fit.

45 (16) No appeal shall lie from a decision of the Court under this section except to the High Court on a point of law.”.

PART 3

EMPLOYMENT REGULATION ORDERS

50 **10.**—Section 34 of the Act of 1946 is amended by substituting the following definition for the definition of “employment regulation order”:

Amendment of section 34 of Act of 1946.

“the expression ‘employment regulation order’ means an order made under section 42C (inserted by *section 12* of the *Industrial Relations (Amendment) Act 2011*) of this Act;”.

Review of joint labour committees.

11.—The Act of 1946 is amended by inserting the following new section after section 41:

5

“Review of joint labour committees.

41A.—(1) As soon as practicable after the commencement of *section 11* of the *Industrial Relations (Amendment) Act 2011*, and at least once every 5 years thereafter the Court shall carry out a review of each joint labour committee.

10

(2) When carrying out a review under subsection (1), the Court shall have regard to the following:

(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned,

15

(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

20

(i) the committee was established, or

25

(ii) the last review under this section was carried out,

(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

30

(i) the committee was established, or

(ii) the last review under this section was carried out,

35

(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;

40

(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;

(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;

45

5

(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;

10

(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified.

15

(3) Following a review under subsection (1), the Court may recommend that:

(a) the joint labour committee is abolished;

20

(b) the joint labour committee is amalgamated with another joint labour committee; or

(c) the establishment order pursuant to which the joint labour committee was established is amended.

25

(4) Where the Court makes a recommendation under subsection (3), it shall forward a copy of the recommendation to the Minister.

30

(5) As soon as practicable after receipt of a copy of a recommendation under subsection (4), the Minister shall, where he or she is satisfied that subsection (2) has been complied with, and where he or she considers it appropriate to do so, make an order in the terms of the recommendation.

35

(6) Where the Minister is not satisfied that subsection (2) has been complied with, or where he or she considers that it is not appropriate to make an order in the terms of the recommendation, he or she shall—

(a) refuse to make an order in the terms of the recommendation, and

40

(b) notify the Court in writing of his or her decision and the reasons for the decision.

45

(7) An order under subsection (5) may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient for the purposes of the order including, where the order abolishes a joint labour committee pursuant to a recommendation of the Court, the revocation of an employment regulation order made pursuant to proposals made by the joint labour committee concerned.

50

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

Employment
regulation orders.

12.—The Act of 1946 is amended by inserting the following new sections after section 42:

“Proposals by joint labour committees in relation to remuneration and conditions of employment.

42A.—(1) Subject to this section and section 42B, a joint labour committee may submit proposals for an employment regulation order to the Court.

(2) Subject to subsection (3), proposals under subsection (1) may include proposals to amend or revoke an employment regulation order.

(3) Where an employment regulation order has been in force for less than 6 months a joint labour committee shall not submit proposals for amending or revoking such order unless the committee is satisfied that—

- (a) the order contains an error, or
- (b) exceptional circumstances exist which warrant the revocation or amendment of the order.

(4) Subject to subsection (5) proposals under subsection (1) may include proposals to—

- (a) fix the minimum rates of remuneration to be paid generally,
- and
- (b) regulate the conditions of employment,

in relation to all or any of the workers in relation to whom the joint labour committee operates, and such proposals may provide for a minimum hourly rate of remuneration and not more than 2 higher hourly rates of remuneration based on length of service in the sector or enterprise concerned, for all or any such workers.

(5) Proposals under subsection (1) to fix remuneration shall provide that a worker to whom the proposals are intended to apply who—

- (a) has not attained the age of 18 years,
- (b) enters employment for the first time after attaining the age of 18 years,

(c) having entered into employment before attaining the age of 18 years continues in employment on attaining that age, or

5 (d) has attained the age of 18 years and, during normal working hours, undergoes a course of study or training prescribed in regulations made by the Minister under section 16 of the
10 National Minimum Wage Act 2000,

shall be remunerated at an hourly rate reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned and those sections shall apply with the necessary modifications, as if such workers were employees for the purposes of that Act.

15 (6) When formulating proposals to submit to the Court under subsection (1), a joint labour committee shall have regard to the following matters:

20 (a) the legitimate interests of employers and workers likely to be affected by the proposals, including—

25 (i) the legitimate financial and commercial interests of the employers in the sector in question,

30 (ii) the desirability of agreeing and maintaining efficient and sustainable work practices appropriate to the sector in question,

35 (iii) the desirability of agreeing and maintaining fair and sustainable minimum rates of remuneration appropriate to the sector in question,

(iv) the desirability of maintaining harmonious industrial relations in the sector in question,

40 (v) the desirability of maintaining competitiveness in the sector in question, and

(vi) the levels of employment and unemployment in the sector in question;

45 (b) the general level of wages in comparable sectors, including, where enterprises in the sector in question are in competition with enterprises situated outside the State, the general level of wages in such comparable sectors in other relevant jurisdictions;

- (c) the national minimum hourly rate of pay declared by order for the time being in force under section 11 of the National Minimum Wage Act 2000, and the appropriateness or otherwise of fixing a statutory minimum hourly rate of pay above that rate; and 5
- (d) the terms of any relevant national agreement relating to pay and conditions for the time being in existence. 10

(7) In this section—

‘remuneration’ means consideration, whether in cash or in kind, which a worker receives from his or her employer in respect of his or her employment but does not include: 15

- (a) pay or time off from work in lieu of public holidays;
- (b) compensation under section 14 of the Organisation of Working Time Act 1997 resulting from the requirement to work on a Sunday; 20
- (c) payments in lieu of notice; or
- (d) payments referable to a worker’s redundancy.

Proposals by joint labour committee for employment regulation orders.

42B.—(1) Where a joint labour committee has formulated proposals for an employment regulation order, the committee shall publish a notice stating— 25

- (a) the place where copies of the proposals may be obtained, 30
- (b) that representations with respect to the proposals may be made to the committee not later than 21 days after the date of such publication.

(2) A joint labour committee shall consider any representations made in accordance with subsection (1) and may, subject to any amendments it considers appropriate following such consideration, adopt the proposals. 35

(3) The chairman of a joint labour committee shall facilitate the parties in reaching agreement in relation to the formulation of proposals for an employment regulation order and the adoption of such proposals, and for that purpose the chairman may adjourn a meeting of a joint labour committee. 40 45

(4) Notwithstanding section 26 of the Industrial Relations Act 1990, where a joint labour committee has failed to formulate proposals or where it has formulated proposals and has failed to adopt 50

5 such proposals, and the chairman is satisfied that no further efforts on his or her part will advance the committee in reaching agreement, the chairman may, and shall if requested by a member of the committee, submit the outstanding issues to the Court for its recommendation.

(5) The Court shall, not later than 21 days after receipt of a submission under subsection (4), hear the members of the joint labour committee.

10 (6) The Court shall, not later than 14 days after a hearing under subsection (5), make a recommendation to the joint labour committee.

15 (7) When making a recommendation under subsection (6) the Court shall have regard to the following:

(a) the representations made by the parties at the hearing;

20 (b) any relevant code of practice for the purposes of the Industrial Relations Act 1990;

(c) the economic and commercial circumstances in relation to the sector to which the joint labour committee relates;

25 (d) the rates of remuneration and conditions of employment of workers in similar employment sectors, including workers in a sector to which another joint labour committee relates;

30 (e) the merits of the dispute and the terms upon which it should be settled.

(8) Not later than 14 days after the Court makes a recommendation under subsection (6), the joint labour committee shall hold a meeting to consider the recommendation.

35 (9) Where, at a meeting held under subsection (8), the joint labour committee fails to formulate or adopt proposals for an employment regulation order, the issues in dispute shall be determined by a majority of the votes of the members present and voting on the issue and, notwithstanding subparagraph (1) of paragraph 6 of the Fifth Schedule to the Industrial Relations Act 1990, if there is an equal division of votes the chairman shall have a second or casting vote, which he or she shall cast having regard to the recommendation of the Court.

40 (10) Where the committee adopts proposals for an employment regulation order, it shall submit such proposals to the Court.

(11) When proposals for an employment regulation order are submitted to the Court, the chairman of the committee shall submit—

- (a) a report to the Court on the circumstances surrounding their adoption, including confirmation that in considering the proposals the joint labour committee has had regard to the matters set out in subsection (6) of section 42A, 5
10
 - (b) a copy of all written submissions considered by the committee when formulating and adopting the proposals, and
 - (c) a copy of any other documentation considered by the committee when formulating the proposals. 15
- (12) (a) When considering whether or not to adopt the proposals of a joint labour committee, the Court shall consider any reports, submissions or other documentation submitted under subsection (11). 20
- (b) Where the Court has not made a recommendation under subsection (6), the Court may, where it considers it appropriate to do so, hear all parties appearing to the Court to be interested and desiring to be heard. 25
 - (c) The Court may, as it thinks proper and where the proposals are in a suitable form for adoption, adopt the proposals of a joint labour committee. 30
 - (d) The Court shall not adopt the proposals of a joint labour committee unless the Court is satisfied that, when considering the proposals, the committee has had regard to the matters set out in subsection (6) of section 42A. 35
- (13) (a) Where the Court is not satisfied that it should adopt the proposals of a joint labour committee, it may submit to the committee amended proposals which the Court is willing to adopt. 40
- (b) The committee may, if it thinks fit, submit the amended proposals, with or without modifications, to the Court. 45
 - (c) The Court may, as it thinks proper, adopt the proposals submitted under paragraph (b) or refuse to adopt the proposals. 50

42C.—(1) Where the Court adopts the proposals of a joint labour committee it shall forward a copy of the proposals to the Minister.

5 (2) As soon as practicable after receipt of a copy of proposals under subsection (1), the Minister shall, where he or she is satisfied that sections 42A and 42B have been complied with, and where he or she considers it appropriate to do so, make an employment regulation order giving effect to such proposals.

10 (3) Where the Minister is not satisfied that sections 42A and 42B have been complied with, or where he or she considers that it is not appropriate to make an employment regulation order to give effect to the proposals adopted by the Court, he or she shall—

15 (a) refuse to make an employment regulation order giving effect to such proposals, and

20 (b) notify the Court in writing of his or her decision and the reasons for the decision.

25 (4) An employment regulation order shall not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by this or any other Act.

(5) An employment regulation order may amend or revoke any previous employment regulation order.

30 (6) Every order under subsection (2) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

40 **13.**—The Act of 1946 is amended by inserting the following sections after section 45:

Enforcement of
employment
regulation orders.

“Complaints to
rights
commissioner.

45 45A.—(1) A worker (or, in the case of a worker who has not reached the age of 18 years, the worker’s parent or guardian, with his or her consent) or any trade union of which the worker is a member, with the consent of the worker, may present a complaint to a rights commissioner that the worker’s employer has contravened an employment regulation order in relation to the worker.

50 (2) Where a complaint under subsection (1) is made, the rights commissioner shall—

(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 5

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under subsection (2) shall do one or more of the following: 10

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

(b) require the employer to comply with the employment regulation order;

(c) require the employer to pay to the worker compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years' remuneration in respect of the worker's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977; 15 20

and the references in paragraphs (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. 25 30

(4) Subject to subsection (5), a rights commissioner shall not entertain a complaint under this section 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) Where a delay by a worker in presenting a complaint under this section is due to any misrepresentation by the employer, subsection (4) shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice. 40

(6) Notwithstanding subsection (4), a rights commissioner may entertain a complaint under this section presented to him or her after the expiration of the period referred to in subsection (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. 45 50

5

(7) 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.

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

10

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

(10) A rights commissioner shall furnish the Court with a copy of each decision given by the commissioner under subsection (2).

15

(11) The Minister may by regulations provide for any matters relating to the proceedings under this section that the Minister considers appropriate.

20

Appeal from decision of rights commissioner.

45B.—(1) A party concerned may appeal to the Court from a decision of a rights commissioner under subsection (2) of section 45A and, if the party does so, the Court shall—

25

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

(b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision,

30

(c) communicate the determination to the parties.

35

(2) An appeal under this section shall be initiated by the party concerned giving, within 6 weeks (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, a notice in writing to the Court containing such particulars as are determined by the Court under paragraphs (e) and (f) of subsection (4) and stating the intention of the party concerned to appeal against the decision.

40

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

45

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

50

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

- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Court; 5
- (e) the particulars to be contained in a notice under subsection (2);
- (f) any matters consequential on, or incidental to, the foregoing matters. 10

(5) The Court may refer a question of law arising in proceedings before it under this section to the High Court for its determination and the determination of the High Court shall be final and conclusive. 15

(6) A party to proceedings before the Court under this section may appeal to the High Court from a determination of the Court on a point of law and the determination of the High Court shall be final and conclusive. 20

(7) The Court shall, on the hearing of any appeal under this section, 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. 25

(8) The 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— 30

- (a) to give evidence in relation to any appeal referred to the Court under subsection (2), or
- (b) to produce any document specified in the notice relating to the matter in the person's possession or power. 35

(9) A witness at a hearing of an appeal before the Court has the same privileges and immunities as a witness before the High Court.

(10) Where a decision of a rights commissioner in relation to a complaint under section 45A has not been carried out by the employer concerned in accordance with its terms and— 40

- (a) the time for bringing an appeal against the decision has expired but no such appeal has been brought, or 45
- (b) an appeal has been brought, but it has been abandoned,

5 the worker concerned (or, in the case of a worker
who has not reached the age of 18 years, the
worker's parent or guardian, with his or her
consent) or, with the consent of the worker, any
trade union of which the worker is a member, may
bring the complaint before the Court and the
Court shall, without hearing the employer concerned
or any evidence (other than in relation to the
10 matters aforesaid), make a determination to
the like effect as the decision.

15 (11) The bringing of a complaint before the
Court under subsection (10) shall be effected by
giving to the Court a written notice containing
such particulars (if any) as may be determined by
the Court.

20 (12) The Court shall publish, in a manner it
considers appropriate, particulars of any determination
made by it under any of paragraphs (a),
(b), (c), (e) and (f) of subsection (4) (not being a
determination as respects a particular appeal
under that subsection) and subsection (11).

25 Enforcement
of
determinations
of Labour
Court.

45C.—(1) If an employer fails to carry out in
accordance with its terms a determination of the
Court in relation to a complaint under section 45A
within 28 days from the date on which the determination
is communicated to the parties, the Circuit
Court shall, on application made to it in that
behalf by—

- 30 (a) the worker concerned (or, in the case of
a worker who has not reached the age
of 18 years, the worker's parent or
guardian with his or her consent),
- 35 (b) with the consent of the worker, any
trade union of which the worker is a
member, or
- (c) the Minister, if the Minister considers it
appropriate to make the application
having regard to all the circumstances,

40 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.

45 (2) The reference in subsection (1) to a determination
of the 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 reference
in that subsection to the date on which the
determination is communicated to the parties
50 shall, in a case where such an appeal is abandoned,
be construed as a reference to the date of such
abandonment.

(3) In an order under this section 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 pay to the worker concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, 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 before the day on which the order of the Circuit Court is made. 5
10

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation. 15

Provisions relating to winding up and bankruptcy.

45D.—(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 virtue of a decision under section 45A(2)(b) or a determination under section 45B(1)(b) by the company to a worker, and the Companies Act 1963 shall have effect accordingly. 20
25

(2) Formal proof of the debts to which priority is given under subsection (1) shall not be required except in cases where it may otherwise be provided by rules made under the Companies Act 1963. 30

(3) 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 virtue of a decision under section 45A(2)(b) or a determination under section 45B(1)(b) by the bankrupt or arranging debtor, as the case may be, to a worker, and the Bankruptcy Act 1988 shall have effect accordingly. 35
40

(4) Formal proof of the debts to which priority is given under subsection (3) shall not be required except in cases where it may otherwise be provided under the Bankruptcy Act 1988. 45

References to rights commissioner by Minister.

45E.—Where—

(a) it appears to the Minister that an employer is not complying with an employment regulation order in relation to a particular worker, 50

(b) a complaint under section 45A, in relation to the matter, has not been presented to a rights commissioner by that worker (or, in the case of a worker

who has not reached the age of 18 years, the worker's parent or guardian with his or her consent) or any trade union of which the worker is a member, and

- (c) the circumstances touching the matter are, in the opinion of the Minister, such as to make it unreasonable to expect the worker (or, in the case of a worker who has not reached the age of 18 years, the worker's parent or guardian with his or her consent) or any trade union of which he or she is a member to present such a complaint,

the Minister may present a complaint in relation to the matter to a rights commissioner and a complaint so presented shall be dealt with, and sections 45A to 45D shall, with any necessary modifications, apply to the complaint, as if it were a complaint presented by the worker concerned under section 45A.”.

14.—The Act of 1946 is amended by inserting the following new section after section 48:

Exemption from obligation to pay statutory minimum remuneration.

“Exemption from obligation to pay statutory minimum remuneration.

48A.—(1) The Court may in accordance with this section exempt an employer from the obligation to pay the statutory minimum remuneration in respect of a worker or number of workers.

(2) An exemption under subsection (1) shall remain in force for such period, being not less than 3 months and not more than 24 months from the date on which the exemption is granted, as is specified in the exemption.

(3) The Court shall not grant an exemption to an employer under subsection (1) if the employer has been granted an exemption in respect of the same worker or workers under that subsection within the previous 5 years.

(4) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Court, apply to the Court for an exemption under subsection (1).

(5) An application under subsection (4) shall be accompanied by—

- (a) a current tax clearance certificate under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 in respect of the employer concerned, and
- (b) such information, particulars and documentation as the Court may reasonably require for the purpose of determining whether an exemption

under subsection (1) should be granted, in particular such information in relation to the employer, his or her business and the potential impact of an exemption, as the Court may direct. 5

(6) On receiving an application under subsection (4) the Court shall convene a hearing of parties to the application and shall give its decision on the application in writing to the parties.

(7) Subject to subsection (8) the Court shall not grant an exemption under subsection (1) unless it is satisfied that where the employer makes an application he or she has entered into an agreement with the majority of the workers or the representative of the majority of the workers in respect of whom the exemption is sought, whereby the workers or their representative consent to the employer making the application, and to abide by any decision on the application that the Court may make. 10
15
20

(8) Notwithstanding subsection (7), where the Court is not satisfied that the majority of the workers or their representatives consent to an application under that subsection, the Court may grant an exemption under subsection (1), provided the Court is satisfied that: 25

- (a) the employer has informed the workers concerned of the financial difficulties of the business and has attempted to come to an agreement with the workers concerned in relation to a reduction of the statutory minimum remuneration, 30
- (b) the employer is unable to maintain the terms of the employment regulation order concerned, and 35
- (c) were the employer compelled to comply with the terms of the employment regulation order concerned there would be a substantial risk that— 40
 - (i) a significant number of the workers concerned would be laid off or made redundant, or
 - (ii) the sustainability of the employer's business would be significantly adversely affected. 45

(9) In considering whether to grant an exemption under subsection (1), the Court shall have regard to the following:

- (a) whether, if an exemption was granted, it would have an adverse effect on employment levels and distort competition in the sector to the detriment of 50

employers not party to the application, who are also subject to the employment regulation order concerned,

5 (b) the long term sustainability of the employer's business, were such an exemption to be granted, and

(c) any other matters the Court considers relevant.

10 (10) An exemption under subsection (1) shall specify:

(a) the names and employment positions occupied by the workers to whom the exemption applies;

(b) the duration of the exemption; and

15 (c) the minimum rates of remuneration to be paid to the worker or workers during the period of the exemption and the worker or workers shall be entitled to be paid at not less than that rate accordingly.

(11) Notwithstanding anything in this section, an exemption under subsection (1) shall not—

25 (a) specify an hourly rate of pay which is less than that declared by order for the time being in force under section 11 of the National Minimum Wage Act 2000, or

30 (b) reduce pension contributions paid by the employer on behalf of the worker or workers concerned.

35 (12) Where during the period of an exemption under this section a new worker replaces a worker to whom the exemption relates, the employer may pay the new worker the hourly rate of pay specified by the Court in respect of the former worker and shall, as soon as practicable, notify the Court in writing of the employment of the new worker.

40 (13) Where a contract between an employer and a worker specified in an exemption under subsection (1), provides for the payment of remuneration at more than the rate provided by such exemption, the contract shall, in respect of any period during which the exemption is in force, have effect as if the rate provided for by such exemption and applicable to such worker were substituted for the rate provided for by the contract.

45 (14) The Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

(15) The Court shall establish and maintain a register of all exemptions under this section and shall make the register available for examination by members of the public at such place and during such reasonable times as it thinks fit. 5

(16) No appeal shall lie from a decision of the Court under this section except to the High Court on a point of law.”.

Amendment to Fifth Schedule to Act of 1990.

15.—The Fifth Schedule to the Act of 1990 is amended by substituting the following subparagraph for subparagraph (4) of paragraph 2: 10

“(4) (a) Subject to clause (b), the independent member of a committee shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine. 15

(b) Every person who, immediately before the commencement of *section 15* of the *Industrial Relations (Amendment) Act 2011*, was an independent member of a committee shall cease to hold office as such independent member on that date. 20

(c) Where the term of office of an independent member of a committee expires under clause (b) or by the effluxion of time he or she shall be eligible for reappointment to that office.”.

Consequential amendments.

16.—(1) Section 1 of the Employment Permits Act 2006 is amended by substituting the following definition for the definition of “employment regulation order”: 25

“ ‘employment regulation order’ means an employment regulation order within the meaning of Part IV of the Industrial Relations Act 1946;”. 30

(2) Section 2 of the Organisation of Working Time Act 1997 is amended by substituting the following definition for the definition of “employment regulation order”:

“ ‘employment regulation order’ means an employment regulation order within the meaning of Part IV of the Industrial Relations Act 1946;”. 35

Amendment of Protection of Employees (Employers’ Insolvency) Act 1984.

17.—Section 6 of the Protection of Employees (Employers’ Insolvency) Act 1984 is amended—

(a) in subsection (2)(a)—

(i) in subparagraph (xxvi), by the deletion of “and” after “that Schedule,”; 40

(ii) in subparagraph (xxvii), by the substitution of “that Schedule, and” for “that Schedule,” and

(iii) by the insertion of the following subparagraph after subparagraph (xxvii): 45

“(xxviii) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under section 45A(2)(b) of the Industrial Relations Act 1946 or a determination by the Labour Court under section 45B(1)(b) of that Act.”,

(b) in subsection (2)(b), by the substitution of “, (xxvii) or (xxviii)” for “or (xxvii)”,

(c) in subsection (2)(c), by the substitution of “, (xxvii) or (xxviii)” for “or (xxvii)”, and

(d) in subsection (9), in the definition of “relevant date”, by the substitution of “, (xxvii) or (xxviii)” for “or (xxvii)”.

15 **18.—**The Terms of Employment (Information) Act 1994 is amended—

Amendment to
Terms of
Employment
(Information) Act
1994.

(a) in subsection (1) of section 1 by inserting the following definitions:

“ ‘employment regulation order’ means an employment regulation order within the meaning of Part IV of the Industrial Relations Act 1946;

‘registered employment agreement’ means a registered employment agreement within the meaning of Part III of the Industrial Relations Act 1946.”,

(b) in subsection (1) of section 3, by inserting the following paragraph after paragraph (f):

“(fa) the terms of any registered employment agreement or employment regulation order applicable to the employee.”,

(c) in subsection (2) of section 5, by inserting “, other than a registered employment agreement or employment regulation order,” after “instruments made under statute”,

(d) by inserting the following new section after section 6:

“Directions by
inspector to
employer.

6A.—(1) Where it appears to an inspector that an employer has contravened section 3, 4, 5 or 6 the inspector may, where he or she considers it appropriate, give a direction to the employer to comply with the provision concerned within such period as is specified in the direction.

(2) In this section ‘inspector’ means an inspector for the purposes of the National Minimum Wage Act 2000 and an inspector may, for the purposes of this section, exercise any of the functions conferred on him or her by that Act.”,

and

(e) in section 7—

- (i) in subsection (1) by substituting “Subject to subsection (1A), an employee may” for “An employee may”, and
- (ii) by inserting the following subsection after subsection (1): 5
 - “(1A) An employee may not present a complaint to a rights commissioner under subsection (1) in respect of a contravention of section 3, 4, 5 or 6, where an employer has—
 - (a) complied with a direction under section 6A 10 in relation to the same contravention, or
 - (b) been given a direction under subsection (1) in relation to the same contravention and the period specified in which to comply with the direction has not expired.”. 15