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*Number 45 of 2001*

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**PROTECTION OF EMPLOYEES (PART-TIME WORK)  
ACT, 2001**

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Number 45 of 2001

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**PROTECTION OF EMPLOYEES (PART-TIME WORK)  
ACT, 2001**

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AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE 97/81/EC OF 15 DECEMBER, 1997, OF THE COUNCIL OF THE EUROPEAN COMMUNITIES CONCERNING THE FRAMEWORK AGREEMENT ON PART-TIME WORK CONCLUDED BY UNICE, CEEP AND THE ETUC<sup>1</sup>, TO CLARIFY THE EFFECT CERTAIN ENACTMENTS RELATING TO EMPLOYEES HAVE IN CASES WHERE THE EMPLOYEE CONCERNED IS A POSTED WORKER (WITHIN THE MEANING OF DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER, 1996, CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES<sup>2</sup>) OR OTHERWISE HAS AN EMPLOYMENT RELATIONSHIP IN THE STATE, TO AMEND SECTION 14(2) OF THE PROTECTION OF EMPLOYMENT ACT, 1977, AND TO PROVIDE FOR RELATED MATTERS. [15th December, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Protection of Employees (Part-Time Work) Act, 2001. Short title, collective citation and construction.

(2) In so far as it relates to the Minimum Notice and Terms of Employment Acts, 1973 and 1984, this Act and those Acts shall be construed together as one and may be cited together as the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

(3) In so far as it relates to the Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990, this Act and those Acts shall be construed together as one and may be cited together as the Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001.

<sup>1</sup> O.J. No. L14, 20.1.1998, p. 9

<sup>2</sup> O.J. No. L018, 21.1.1997, p. 1

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(4) In so far as it relates to the Redundancy Payments Acts, 1967 to 1990, this Act and those Acts shall be construed together as one and may be cited together as the Redundancy Payments Acts, 1967 to 2001.

(5) In so far as it relates to the Terms of Employment (Information) Act, 1994, this Act and that Act shall be construed together as one and may be cited together as the Terms of Employment (Information) Acts, 1994 and 2001.

(6) In so far as it relates to the Unfair Dismissals Acts, 1977 to 1993, this Act and those Acts shall be construed together as one and may be cited together as the Unfair Dismissals Acts, 1977 to 2001.

(7) In so far as it relates to the Worker Participation (State Enterprises) Acts, 1977 to 1993, this Act and those Acts shall be construed together as one and may be cited together as the Worker Participation (State Enterprises) Acts, 1977 to 2001.

Commencement.

2.—This Act shall come into operation on such day or days as the Minister 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.

Interpretation (generally).

3.—(1) In this Act, unless the context otherwise requires—

“collective agreement” means an agreement by or on behalf of an employer on the one hand, and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand;

“conditions of employment” includes conditions in respect of remuneration and matters related thereto (and, in relation to any pension scheme or arrangement, includes conditions for membership of the scheme or arrangement and entitlement to rights thereunder and conditions related to the making of contributions to the scheme or arrangement);

“contract of employment” means—

(a) a contract of service or apprenticeship, and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

“employee” means a person of any age 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; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or

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servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be; Pt.1 S.3

“employer” means, in relation to an employee, 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, subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer;

“Framework Agreement” means the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC annexed to Directive 97/81/EC of 15 December, 1997 of the Council of the European Communities;

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

“prescribed” means prescribed by regulations made by the Minister under this Act;

“relevant enactment” means—

- (a) the Carer’s Leave Act, 2001,
- (b) the Minimum Notice and Terms of Employment Acts, 1973 and 1984,
- (c) the Protection of Employees (Employers’ Insolvency) Acts, 1984 and 1990,
- (d) the Redundancy Payments Acts, 1967 to 1990,
- (e) the Terms of Employment (Information) Act, 1994,
- (f) the Unfair Dismissals Acts, 1977 to 1993, or
- (g) the Worker Participation (State Enterprises) Acts, 1977 to 1993;

“remuneration”, in relation to an employee, includes—

- (a) any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and
- (b) any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.

(2) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it

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(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act).

Regulations and orders.

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 or for the purpose of enabling any provision of this Act to have full effect.

(2) Regulations under this Act may make different provisions in relation to different classes of employees or employers, different areas or otherwise by reference to the different circumstances of the matter.

(3) A regulation or order under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient.

(4) The Minister may by order amend or revoke an order under this Act (including an order under this subsection).

(5) A regulation or order under this Act (other than an order under *section 2*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling that regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Repeal.

5.—The Worker Protection (Regular Part-Time Employees) Act, 1991, is repealed.

Expenses.

6.—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.

## PART 2

### PART-TIME WORK AND THE RIGHTS OF PART-TIME EMPLOYEES

Interpretation  
(Part 2).

7.—(1) In this Part—

“agency worker” means an employee whose contract of employment is of the kind mentioned in *paragraph (b)* of the definition of “contract of employment” in *section 3*;

“associated employer” shall be construed in accordance with *subsection (5)*;

“comparable employee” shall be construed in accordance with *subsection (2)*;

“full-time employee” means an employee who is not a part-time employee;

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“normal hours of work” means, in relation to an employee, the average number of hours worked by the employee each day during a reference period; Pt.2 S.7

“part-time employee” means an employee whose normal hours of work are less than the normal hours of work of an employee who is a comparable employee in relation to him or her;

“reference period” means a period which complies with the following conditions:

- (a) the period is of not less than 7 days nor more than 12 months duration,
- (b) the period is the same period by reference to which the normal hours of work of the other employee referred to in the definition of “part-time employee” in this section is determined, and
- (c) the number of hours worked by the employee concerned in the period constitutes the normal number of hours worked by the employee in a period of that duration;

“relevant part-time employee” shall be construed in accordance with *subsection (2)*.

(2) For the purposes of this Part, an employee is a comparable employee in relation to the employee firstly mentioned in the definition of “part-time employee” in this section (the “relevant part-time employee”) if—

- (a) the employee and the relevant part-time employee are employed by the same employer or associated employers and one of the conditions referred to in *subsection (3)* is satisfied in respect of those employees,
- (b) in case *paragraph (a)* does not apply (including a case where the relevant part-time employee is the sole employee of the employer), the employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant part-time employee, to be a type of employee who is to be regarded for the purposes of this Part as a comparable employee in relation to the relevant part-time employee, or
- (c) in case neither *paragraph (a)* nor *(b)* applies, the employee is employed in the same industry or sector of employment as the relevant part-time employee is employed in and one of the conditions referred to in *subsection (3)* is satisfied in respect of those employees,

and references in this Part to a comparable full-time employee in relation to a part-time employee shall be construed accordingly.

(3) The following are the conditions mentioned in *subsection (2)*—

- (a) both of the employees concerned perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (b) the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed

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or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and

(c) the work performed by the relevant part-time employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

(4) If the relevant part-time employee is an agency worker then the application of *subsection (3)* shall not result in any employee, other than another agency worker, being regarded, for the purposes of this Part, as a comparable employee in relation to him or her (and likewise, if the relevant part-time employee is a non-agency worker, the application of that subsection shall not result in an agency worker being regarded, for the purposes of this Part, as a comparable employee in relation to the relevant part-time employee).

(5) For the purposes of this Part, 2 employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control.

Application of relevant enactments.

**8.**—Each relevant enactment shall apply to a part-time employee in the same manner, and subject to the like exceptions not inconsistent with this section, as it applies, other than by virtue of this Act, to an employee to whom that enactment relates.

Conditions of employment for part-time employees.

**9.**—(1) Subject to *subsections (2) and (4)* and *section 11(2)*, a part-time employee shall not, in respect of his or her conditions of employment, be treated in a less favourable manner than a comparable full-time employee.

(2) Without prejudice to *section 11(2)*, if treating a part-time employee, in respect of a particular condition of employment, in a less favourable manner than a comparable full-time employee can be justified on objective grounds then that employee may, notwithstanding *subsection (1)*, be so treated.

(3) Nothing in *subsection (2)* shall be construed as affecting the application of a relevant enactment, by virtue of *section 8*, to a part-time employee.

(4) *Subsection (1)* shall, in so far, but only in so far, as it relates to any pension scheme or arrangement, not apply to a part-time employee whose normal hours of work constitute less than 20 per cent of the normal hours of work of a comparable full-time employee.

(5) For the avoidance of doubt, the reference in this section to a comparable full-time employee is a reference to such an employee either of the opposite sex to the part-time employee concerned or of the same sex as him or her.

Proportionate provision of certain conditions of employment.

**10.**—(1) The extent to which any condition of employment referred to in *subsection (2)* is provided to a part-time employee for the purposes of complying with *section 9(1)* shall be related to the proportion which the normal hours of work of that employee bears to the normal hours of work of the comparable full-time employee concerned.

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(2) The condition of employment mentioned in *subsection (1)* is a condition of employment the amount of the benefit of which (in case the condition is of a monetary nature) or the scope of the benefit of which (in any other case) is dependent on the number of hours worked by the employee. Pt.2 S.10

(3) For the avoidance of doubt, neither this section nor any other provision of this Act affects the operation of Part III of the Organisation of Working Time Act, 1997.

**11.—**(1) This section applies to a part-time employee who—

- (a) works on a casual basis, and
- (b) does not fall within a class of employee prescribed under *subsection (7)*.

Part-time employees who work on a casual basis.

(2) Notwithstanding *section 9(1)*, a part-time employee to whom this section applies may, if such less favourable treatment can be justified on objective grounds, be treated, in respect of a particular condition of employment, in a less favourable manner than a comparable full-time employee.

(3) Nothing in *subsection (2)* shall be construed as affecting the application of a relevant enactment, by virtue of *section 8*, to a part-time employee.

(4) For the purposes of this section, a part-time employee shall, at a particular time, be regarded as working on a casual basis if—

- (a) at that time—
  - (i) he or she has been in the continuous service of the employer for a period of less than 13 weeks, and
  - (ii) that period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment,

or

- (b) by virtue of his or her fulfilling, at that time, conditions specified in an approved collective agreement that has effect in relation to him or her, he or she is regarded for the purposes of that agreement as working on such a basis.

(5) In *subsection (4)(b)*, “approved collective agreement” means a collective agreement that stands approved of by the Labour Court under the *Schedule* to this Act.

(6) For the purposes of *subsection (4)(a)*, the service of an employee in his or her employment shall be deemed to be continuous unless that service is terminated by—

- (a) the dismissal of him or her by the employer, or
- (b) the employee voluntarily leaving his or her employment.

(7) The Minister shall from time to time cause to be reviewed, in such manner as he or she determines, the operation of this section in relation to part-time employees and may, following such a review, subject to *subsection (9)*, prescribe a class or classes of such employee to be a class or classes of employee to whom this section shall not apply.

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(8) In determining the manner in which such a review shall be carried out, the Minister shall consult with such organisations representative of employers, such organisations representative of employees, and such other bodies as the Minister considers appropriate and, before making regulations under this section, the Minister shall consult with such organisations and bodies in relation to the terms of the proposed regulations.

(9) The Minister shall not make regulations under this section unless the results of the review concerned referred to in *subsection (7)*, in the Minister's opinion, show that there cannot, in ordinary circumstances, be objective grounds for treating the class or classes of employees to whom the regulations relate in a less favourable manner than a comparable full-time employee.

Objective grounds for less favourable treatment.

**12.—**(1) A ground shall not be regarded as an objective ground for the purposes of any provision of this Part unless it is based on considerations other than the status of the employee concerned as a part-time employee and the less favourable treatment which it involves for that employee is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose.

(2) For the avoidance of doubt, a ground which does not constitute an objective ground for the purposes of *section 9(2)* may be capable of constituting an objective ground for the purposes of *section 11(2)*.

Review of obstacles to the performance of part-time work.

**13.—**(1) The Commission may, and at the request of the Minister shall, study every industry and sector of employment for the purposes of identifying obstacles that may exist in that industry or sector to persons being able to perform part-time work in that industry or sector and make recommendations as to how any such obstacles so identified could be eliminated.

(2) The Commission shall report to the Minister in relation to any study and recommendations made by it under *subsection (1)* (whether that study and those recommendations have been made of its own volition or not) and shall publish, in such manner as it thinks appropriate, that study and those recommendations.

(3) Any such publication may include such practical guidance for the industries and sectors of employment concerned with regard to the steps that may be taken to implement the recommendations of the Commission as the Commission thinks appropriate.

(4) In formulating recommendations under *subsection (1)*, the Commission shall invite such organisations representative of employers, such organisations representative of employees, and such other bodies as the Commission considers appropriate, to make submissions, whether orally or in writing, to it in relation to the proposed recommendations, and shall have regard to any submissions made to it, in response to the invitation, by such organisations or bodies.

(5) The Commission shall, after consultation with organisations and bodies of the kind referred to in *subsection (4)*, determine the extent to which the preparation of a code of practice under this subsection with respect to the steps that could be taken by employers for the purposes of Clause 5.3 of the Framework Agreement would, in its opinion, be of practical benefit to employees and employers and may, if in its opinion the preparation of such code would be of

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sufficient practical benefit to those persons, prepare and publish such a code accordingly. Pt.2 S.13

(6) The Commission may, after consultation with the organisations and bodies referred to in *subsection (5)*, amend or revoke, or replace with another code of practice thereunder, a code of practice under *subsection (5)*; the Commission shall publish any such replacement code or, as appropriate, publish notice of the making of any such amendment and its nature or any such revocation, as the case may be.

(7) In this section—

“Commission” means the Labour Relations Commission;

“obstacles” includes obstacles arising by virtue of the operation of any enactment and the following of any practice;

“part-time work” means work which, if it were performed, would result in the person performing it being regarded as a part-time employee for the purposes of this Act.

**14.**—Save as expressly provided otherwise in this Act, a provision in an agreement (whether a contract of employment or not and whether made before or after the commencement of the provision concerned of this Act) shall be void in so far as it purports to exclude or limit the application of, or is inconsistent with, any provision of this Act. Voidance of certain provisions.

**15.**—(1) An employer shall not penalise an employee—

- (a) for invoking any right of the employee to be treated, in respect of the employee’s conditions of employment, in the manner provided for by this Part, or
- (b) for having in good faith opposed by lawful means an act which is unlawful under this Act, or
- (c) for refusing to accede to a request by the employer to transfer from performing—
  - (i) full-time work to performing part-time work, or
  - (ii) part-time work to performing full-time work,or
- (d) for giving evidence in any proceedings under this Act or giving notice of his or her intention to do so or to do any other thing referred to in *paragraph (a), (b) or (c)*.

Prohibition of penalisation of employee by employer.

(2) For the purposes of this section, an employee is penalised if he or she—

- (a) is dismissed, suffers any unfavourable change in his or her conditions of employment or any unfair treatment (including selection for redundancy), or
- (b) is the subject of any other action prejudicial to his or her employment,

but, where any such action with regard to the employee is in respect of the matter referred to in *subsection (1)(c)*, that action shall not constitute a penalisation of the employee if both of the following conditions are complied with—

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- (i) having regard to all the circumstances, there were substantial grounds both to justify the employer's making the request concerned and the employer's taking that action consequent on the employee's refusal, and
- (ii) the taking of 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)* applies.

(3) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to the employee in respect of that penalisation both under this Part and under those Acts.

(4) In this section—

“full-time work” means work which, if it were performed, would result in the person performing it being regarded as a full-time employee for the purposes of this Act;

“part-time work” has the same meaning as it has in *section 13*.

Complaints to rights commissioner.

**16.—(1)** An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened *section 9* or *15* in relation to the employee and, if the employee or such a trade union does so, the commissioner shall give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties.

(2) A decision of a rights commissioner under *subsection (1)* shall do one or more of the following—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with the relevant provision,
- (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 2 years remuneration in respect of the employee's employment,

and the references in the foregoing paragraphs 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.

(3) A rights commissioner shall not entertain a complaint under this section if it is presented to the commissioner after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates or the date of termination of the contract of employment concerned, whichever is the earlier.

(4) Notwithstanding *subsection (3)*, 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 (3)* (but not later than 12 months after such expiration) if he or she is satisfied

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that the failure to present the complaint within that period was due to reasonable cause. Pt.2 S.16

(5) 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.

(6) A copy of a notice under *subsection (5)* shall be given to the other party concerned by the rights commissioner concerned.

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

(8) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subsection (1)*.

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

**17.—(1)** A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *section 16* 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.

Appeals from and enforcement of decisions of rights commissioner.

(2) An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *subsection (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subsection (2)* shall be given by the Labour Court to the other party concerned as soon as may be 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—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour 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 Labour Court,
- (e) the particulars to be contained in a notice under *subsection (2)*, and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this section to the High Court for determination by the High Court and the determination of that Court shall be final and conclusive.

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(6) A party to proceedings before the Labour Court under this section 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.

(7) Section 39(17) of the Redundancy Payments Act, 1967, shall apply in relation to proceedings before the Labour Court under this Part as it applies to matters referred to the Employment Appeals Tribunal under that section with—

- (a) the substitution in that provision of references to the Labour Court for references to the Tribunal,
- (b) the deletion in paragraph (d) of that provision of “registered”, and
- (c) the substitution in paragraph (e) of that provision of “a fine not exceeding €1,900” for “a fine not exceeding twenty pounds”.

(8) Where a decision of a rights commissioner in relation to a complaint under this Act 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, not later than 6 weeks after the expiry of that time, 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.

(9) The bringing of a complaint before the Labour Court under *subsection (8)* shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(10) The Labour Court shall publish, in such manner as it thinks fit, particulars of any determination made by it under *paragraphs (a), (b), (c), (e) and (f) of subsection (4)* (not being a determination as respects a particular appeal under this section) and *subsection (9)*.

Enforcement of determinations of Labour Court.

**18.—(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 *section 16* within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the employee concerned,
- (b) with the consent of the employee, any trade union of which the employee 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 carry out the determination in accordance with its terms.

(2) The reference in *subsection (1)* to a determination of the Labour Court is a reference to such 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

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such an appeal is abandoned, be construed as references to the date of such abandonment. Pt.2 S.18

(3) 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 employee 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 determination of the Labour Court is communicated to the parties and ending on the date of the order.

(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, business or occupation.

**19.**—*Sections 16 to 18* shall not apply to a member of the Defence Forces. Non-application of sections 16 to 18.

### PART 3

#### MISCELLANEOUS

**20.**—(1) In this section, the “Directive” means Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Clarification of effect of certain enactments in relation to posted workers and other persons having an employment relationship in the State.

(2) For the avoidance of doubt, every enactment referred to in *subsection (3)* that confers rights or entitlements on an employee applies and shall be deemed always to have applied to—

- (a) a posted worker (within the meaning of the Directive), and
- (b) a person, irrespective of his or her nationality or place of residence, who—
  - (i) has entered into a contract of employment that provides for his or her being employed in the State,
  - (ii) works in the State under a contract of employment, or
  - (iii) where the employment has ceased, entered into a contract of employment referred to in *subparagraph (i)* or worked in the State under a contract of employment,

in the same manner, and subject to the like exceptions not inconsistent with this subsection, as it applies and applied to any other type of employee.

(3) The enactment mentioned in *subsection (2)* is one the principal functions under which are vested (disregarding functions vested in the Labour Court, the Employment Appeals Tribunal or any other person who is not a Minister of the Government or a Minister of State) in—

- (a) the Minister or a Minister of State at the Department of Enterprise, Trade and Employment, or

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(b) the Minister for Justice, Equality and Law Reform or a Minister of State at the Department of Justice, Equality and Law Reform.

Amendment of section 14(2) of Protection of Employment Act, 1977.

**21.**—Section 14(2) of the Protection of Employment Act, 1977, is amended by the substitution for “£3,000” of “€12,500”.

## SCHEDULE

### APPROVAL OF COLLECTIVE AGREEMENTS FOR PURPOSES OF *section 11(4)*

1. In this Schedule, “collective agreement” means a collective agreement referred to in *section 11(5)*.

2. (1) On an application being made in that behalf by any of the parties thereto, the Labour Court may, subject to the provisions of this Schedule, approve of a collective agreement.

(2) On receipt of an application under this paragraph, the Labour Court shall consult such representatives of employees and employers as it considers to have an interest in the matters to which the collective agreement, the subject of the application, relates.

(3) The Labour Court shall not approve of a collective agreement unless the following conditions are fulfilled as respects that agreement, namely—

(a) the Labour Court is satisfied that it is appropriate to approve of the agreement having regard to Clause 2.2 of the Framework Agreement,

(b) the agreement has been concluded in a manner usually employed in determining the pay or other conditions of employment of employees in the employment concerned,

(c) the body which negotiated the agreement on behalf of the employees concerned is the holder of a negotiation licence under the Trade Union Act, 1941, or is an excepted body within the meaning of that Act which is sufficiently representative of the employees concerned,

(d) the agreement is in such form as appears to the Labour Court to be suitable for the purposes of the agreement being approved of under this section.

(4) Where the Labour Court is not satisfied that the condition referred to in *clause (a) or (d) of subparagraph (3)* is fulfilled in relation to a collective agreement, the subject of an application under this paragraph (but is satisfied that the other conditions referred to in *subparagraph (3)* are fulfilled in relation to the agreement), it may request the parties to the agreement to vary the agreement in such manner as will result in the said condition being fulfilled and if those parties agree so to vary the agreement and vary it, accordingly, the Labour Court shall approve of the agreement as so varied.

3. Where a collective agreement which has been approved of under this Schedule is subsequently varied by the parties thereto, any of the said parties may apply to the Labour Court to have the agreement, as so varied, approved of by the Labour Court under this

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Schedule and the provisions of this Schedule shall apply to such an application as they apply to an application under *paragraph 2*. SCH.

4. The Labour Court may withdraw its approval of a collective agreement under this Schedule where it is satisfied that there are substantial grounds for so doing.

5. The Labour Court shall determine the procedures to be followed by a person in making an application under *paragraph 2* or *3*, by the Labour Court in considering any such application or otherwise performing any of its functions under this Schedule and by persons generally in relation to matters falling to be dealt with under this Schedule.

6. The Labour Court shall publish, in such manner as it thinks fit, particulars of the procedures referred to in *paragraph 5*.

7. The Labour Court shall establish and maintain a register of collective agreements standing approved of by it under this Schedule and such a register shall be made available for inspection by members of the public at all reasonable times.