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Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Regulatory Impact Analysis

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

October 2023

Contents

1. Summary of Regulatory Impact Analysis	3
2. Description of Policy Context and Objectives	5
2.1. Context	5
2.2. Policy Objective	7
3. Identification and analysis of policy options	8
Option 1: Do nothing	8
Option 2: Make some targeted changes to the current legislation	8
Conclusion	10
4. Impact Analysis	11
4.1. National Competitiveness	11
4.2. Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities	11
4.3. The environment	11
4.4. Significant policy change in an economic market including impacts on competition and consumers	11
4.5. North-South, East-West relations	11
4.6. The rights of citizens/human rights	11
4.7. Compliance burden on third parties e.g., citizens and business	11
4.8. SME Test	12
5. Consultation	13
6. Enforcement and Compliance	14
7. Review	16
8. Publication.....	17

1. Summary of Regulatory Impact Analysis

Summary of Regulatory Impact Analysis (RIA)	
Department: Enterprise, Trade and Employment	Title of legislation: Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023
Stage: Seeking Government approval to proceed to publish the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023.	Date: October 2023
Related Publications: <ul style="list-style-type: none">• General Scheme of Plan of Action on Collective Redundancies following Insolvency Bill 2023 and RIA (March 2023)• Plan of Action for Collective Redundancies following Insolvency (June 2021)• Expert Examination and Review of Laws on the Protection of Employee Interests when assets are separated from the operating entity (Duffy Cahill Report) (April 2016)• Company Law Review Group: Review of existing legislative provisions regarding the provision of information to creditors generally and in particular to employees (March 2021)• Company Law Review Group: Report on the Protection of Employees and Unsecured Creditors (2017)• Company Law Review Group: Report on the consequences of certain corporate liquidations and restructuring practices, including splitting of corporate operations from asset holding entities in group structures (December 2021)	
Available to view or download at: https://enterprise.gov.ie/en/legislation/	
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Policy objectives being pursued: <p>The policy objective of this Bill is to further enhance the protection of employees who find themselves in a collective redundancy situation following insolvency and in a way that does not unduly impede enterprises in the conduct of their business, and to provide for a statutory Employment Law Review Group to advise the Minister on employment rights and redundancy and insolvency laws in the State.</p>	
Policy options considered: <ol style="list-style-type: none">1. Do nothing.2. Amend the existing legislation in certain aspects.	

Preferred option: Option 2.

OPTIONS

	Costs	Benefits	Impacts
1.	No additional direct costs.	No State intervention required.	<p>Existing robust legislative protections and safeguards afforded to employees involved in a redundancy following insolvency remain in place.</p> <p>Does not address the issues raised by stakeholders over a period of time.</p> <p>Will not meet the commitment in the Programme for Government.</p>
2.	<p>No additional direct costs for employers/companies associated with this option.</p> <p>Minimal additional indirect /compliance costs for employers and liquidators.</p> <p>Additional costs to the Exchequer with the Employment Law Review Groups' (ELRG) Chairperson stipend at €8,978 per annum, plus €10k approx. in annual expenses supporting the ELRG.</p>	<p>Seeks to further supplement the already robust legislative protections and safeguards afforded to employees involved in a collective redundancy following insolvency particularly at a time when there is a potential for significant increase in insolvencies.</p> <p>Irish employment legislation will reflect CJEU case law.</p> <p>The transparency of the collective redundancy consultation processes for employees will be enhanced.</p> <p>Administrative processes pertaining to collective redundancies will be streamlined.</p> <p>Discreet amendments to company law will further enhance the flow of information to employees as creditors during a court liquidation.</p> <p>Those company law provisions that protect the insolvency estate from being put out of reach of creditors, including employees, will be more accessible.</p>	<p>As the context for this Bill is the intersection between insolvency and redundancy/employment rights legislation, on the one hand, and company law, on the other, this area has presented certain complexities in terms of developing further safeguards and could result in unintended consequences.</p> <p>The Bill, once enacted, should not give rise to standalone complaints to the Workplace Relations Commission but will expand the basis on which employees may obtain redress in relation to certain contraventions.</p> <p>The ELRG would play an important role in ensuring that the State's suite of employment rights and redundancy legislation remains relevant and fit for purpose and is updated to reflect international developments.</p>

2. Description of Policy Context and Objectives

2.1. Context

PROGRAMME FOR GOVERNMENT

The Programme for Government committed to “review whether the legal provisions surrounding collective redundancies and the liquidation of companies effectively protect the rights of workers”.

COLLECTIVE REDUNDANCIES

A redundancy occurs where an employee’s position is no longer required by the employer and where that employee is not replaced by another, for example due to the closure of the business or a reduction in the number of staff.

Collective redundancies¹ are situations where, during any period of 30 consecutive days, the number of redundancies is:

- 5 or more employees, where 21-49 are normally employed in an establishment,
- 10 or more employees where 50-99 are normally employed in an establishment,
- 10% or more of the employees where 100-299 are employed in an establishment, or
- 30 or more employees where 300 or more are employed in an establishment.

There are rules in place which govern how collective redundancies must be managed by employers, including:

- The obligation to consult with and provide certain information to employees’ representatives in advance of any collective redundancies occurring;²
- The requirement to inform the Minister for Enterprise, Trade and Employment of the proposed collective redundancies.³

These rights and obligations derive from an EU level, with consolidating Directive 98/59/EC (“on the approximation of the laws of the Member States relating to collective redundancies”) currently in force. The relevant Irish legislation is the Protection of Employment Acts 1977 – 2014.

If an employer is insolvent or winding up their business, collective redundancies will naturally affect 100% of their employees.

PLAN OF ACTION ON COLLECTIVE REDUNDANCIES FOLLOWING INSOLVENCY

The [Plan of Action on Collective Redundancies following Insolvency](#) was published in June 2021 following extensive engagement with the social partners. The Plan was also informed by the work of the Company Law Review Group (CLRG), a statutory body made up of representatives from a wide

¹ Section 6, Protection of Employment Act 1977.

² Sections 9 and 10, Protection of Employment Act 1977.

³ Section 12, Protection of Employment Act 1977.

range of stakeholders and includes representatives from the trade unions, business associations, banking and auditing bodies, as well as academics, legal practitioners and insolvency experts.

The Plan addresses matters relating to employment rights and company law and sets out several commitments to further safeguard the rights of workers in these circumstances including:

- a range of amendments to company law and employment law,
- the setting up on a statutory basis of an Employment Law Review Group, and
- the provision of an accessible guidance document to help workers and their representatives navigate the existing legal framework.

The Plan was informed by a series of initiatives including the following reports:

- [Expert Examination and Review of Laws on the Protection of Employee Interests when assets are separated from the operating entity \(Cahill Duffy Report\)](#) (April 2016)
- Company Law Review Group: [Report on the Protection of Employees and Unsecured Creditors](#) (2017)
- Company Law Review Group: [Review of existing legislative provisions regarding the provision of information to creditors generally and in particular to employees](#) (March 2021) – including ICTU’s minority report

The work of the CLRG on corporate restructuring, which was under way at the time of the publication of the *Plan of Action*, was also referenced in the Plan in terms of future work to be undertaken by the Department. At end 2021 the CLRG’s report was presented to the Department:

- [Report on the consequences of certain corporate liquidations and restructuring practices, including splitting of corporate operations from asset holding entities in group structures](#) (December 2021)

The Department analysed the policy commitments in the *Plan of Action* and the CLRG’s December 2021 report recommendations and developed them from an operational and policy perspective. This approach formed the basis of the General Scheme.

ECONOMIC OUTLOOK

Despite the cumulative economic impacts of Covid-19, Brexit and the invasion of Ukraine, the number of insolvencies in Ireland has been significantly below pre-pandemic levels since March 2020 and has yet to rise to normal levels thus far in 2023. The cumulative effect of Government wage supports, deferred tax liabilities, loan payment breaks, forbearance from other creditors, highly accommodative monetary policy and pre-existing financial buffers are likely to have held back the liquidation rate. A February 2022 report by practitioners has estimated that Government supports had prevented 4,500 business failures. The unwinding of Covid-19 pandemic supports and the effects of inflationary pressures have the potential to expose a potentially significant latent distress among a cohort of Irish businesses. The Central Bank of Ireland (CBI) in its October 2022 report ‘*Enterprise Policy Issues for Distressed Businesses Following the Unwinding of Pandemic Support*’ estimates that 4 per cent of active Irish businesses, representing approximately 10,000 firms, may require restructuring, liquidation, or some form of company dissolution. While not a direct comparison, the CBI compares this estimate to approximately 6,000 - 7,000 companies being dissolved through either insolvent liquidation or involuntary strike-off in an ordinary year. In this context, insolvency rates, and the need

for restructuring of liabilities for potentially viable businesses, are likely to rise, even before the effects of the current inflationary shock are factored in.

The exceptional supports provided during the Covid-19 pandemic helped prevent business failures but may also have supported businesses which would have failed in the period in the ordinary course of events. It may take some time from the unwinding of Covid-19 supports to reach peak insolvent liquidations. It is important to note that there is evidence of a time lag between economic shocks and their impact on business closures in developed economies. Previous analysis by the World Bank indicates that it took 13 quarters from the onset of the financial crisis in 2007 before OECD countries reached a peak of insolvent liquidations.

2.2. Policy Objective

The policy objective of this Bill is to further enhance the protection of employees in a collective redundancy in a way that does not unduly impede enterprises in the conduct of their business. This policy initiative is not in response to any one previous company insolvency resulting in collective redundancies. Rather, it addresses the issues arising across the generality of such situations and seeks to further supplement the already robust legislative protections and safeguards afforded to the employees involved.

The Government's policy response in the *Plan of Action* has been informed by several initiatives and combines legislative proposals in the areas of employment law governing insolvency and redundancy as well as legislative proposals in the area of company law that are material to the protection of workers as creditors.

Given the impact the crisis continues to have on the liquidity of companies, it is reasonable to anticipate an increase in winding up petitions. The Bill seeks to mitigate this with a view to enhancing the protection of employees that are already of a feature of the existing legal landscape.

3. Identification and analysis of policy options

Option 1: Do nothing

COSTS

No additional direct costs.

BENEFITS

No State intervention required.

IMPACT

While the State already has robust legislative protections and safeguards afforded to employees involved in a redundancy following insolvency, maintaining the *status quo* does not address the issues raised by stakeholders. Accordingly, this option is not considered viable.

Option 2: Make some targeted changes to the current legislation

Under this option, the following legislative changes are proposed to fulfil the policy objective:

Protection of Employment Act 1977, as amended

- (a) Remove the exemption from notification requirements in respect of collective redundancies caused by the employer's insolvency. This means all collective redundancies will be subject to a 30-day notification period before they take effect, including where the employer is insolvent.
- (b) Provide that employees may seek redress from the Workplace Relations Commission (WRC) where their employer makes them redundant before the 30-day notification period finishes. This change will apply to all collective redundancies, not just those precipitated by insolvency. This is in addition to employees' existing right to make a complaint to the WRC should their employer fail to consult with or provide information to their representatives.
- (c) Align the Act with case law of the Court of Justice of the European Union (CJEU)⁴, by explicitly providing that the employer's obligations must also be complied with by a liquidator or similar appointee, where they are managing the collective redundancy process in an insolvency situation.
- (d) Provide for the penalties where a liquidator or receiver fails to comply with their obligations under the Act, as outlined in section 6 of this RIA.
- (e) Update the methods by which employers can notify the Minister of proposed collective redundancies.

Companies Act 2014, as amended:

- (a) Enhance the quality and circulation of information to workers as creditors.

⁴ Claes v Landsbanki Luxembourg SA (C-235/10)

- (b) Make more accessible those provisions that protect the insolvency estate from being put out of reach of creditors, including employees.

Establish the Employment Law Review Group (ELRG)

- (a) Provide for a statutory Employment Law Review Group;
- (b) Define the functions of the Review Group;
- (c) Provide for membership, meetings, and business of the Review Group; and
- (d) Provide for annual report obligations and the provision of information to the Minister.

COSTS

Costs to employers: There are no additional direct costs for employers/companies associated with this option.

There are minimal indirect/compliance costs for employers associated with this option. There is no change to employers' existing obligations under collective redundancy rules. Additional costs would only arise where an employer fails to meet their obligations under collective redundancy rules and their employee(s) are successful in a claim at the WRC.

Costs to third parties: As the redundancy related measures included in the Bill relate to collective redundancies arising from the employer's insolvency, there may be some very minor additional compliance costs on insolvency practitioners in employer wind-up scenarios where the insolvency practitioner is managing the affairs of the business.

The compliance burden of adhering to the changes to collective redundancy rules is expected to be negligible. The Department's understanding is that liquidators and similar appointees are already adhering to the current requirement to consult with and inform employee representatives (following the CJEU *Claes* judgment). The only new requirement is to prepare and send a standard notification to the Minister (requiring minimal resources). As such, the changes under this option are not expected to impact the cost of liquidations and similar winding-up proceedings.

Costs to the State: There are additional annual costs to the Exchequer in establishing the ELRG in relation to Chairperson costs at €8,978 per annum, plus an estimated €10,000 in annual expenses supporting the ELRG.

BENEFITS

This option seeks to address the main issues raised by stakeholders, within the parameters of the current legislative frameworks.

In respect of the changes to *collective redundancy rules*, the following benefits apply:

- **Irish legislation will reflect CJEU case law:** This will ensure relevant stakeholders clearly understand their obligations in a collective redundancy process, following the *Claes* judgment.
- **The transparency of the collective redundancy consultation processes for employees will be enhanced:** Consultation and information sharing with employees' representatives will be required for all proposed collective redundancies, including those precipitated by the employer's insolvency.

- **Administrative processes will be streamlined:** Updating the Protection of Employment Act 1977 to allow for electronic submission of collective redundancies notifications to the Minister will streamline the process for employers, who can submit notifications at no cost via email if they choose. This reflects the Digital by Default core principle outlined in *Connecting Government 2030: A Digital and ICT Strategy for Ireland's Public Service*.

In respect of *company law*, the following changes to the Companies Act 2014 will enhance the regulatory framework for the benefit of employees as creditors in insolvent liquidations within the context of the Act's objective to balance the respective rights of stakeholders:

- **The flow of information to employees as creditors will be further enhanced:** The Companies (Rescue Process for Small and Micro Companies) Act 2021 amended the 2014 Act to provide for a dedicated position for employees on the committee of inspection, a committee which may be elected to oversee the liquidation. Additional amendments to the 2014 Act will further enhance the flow of information to employees as creditors in a corporate insolvency situation.
- **Those company law provisions that protect the corporate insolvency estate from being put out of reach of creditors, including employees, will be more accessible:** The amendments will include lowering the test required by the court to order a related company to contribute to the debts of the insolvent company; giving further discretion to the courts to increase the look back period in respect of a transaction that is an unfair preference so that the hard deadlines cannot be used to evade the provision and put assets beyond the reach of creditors; addressing difficulties in respect of the application and interpretation of the reckless trading.

In respect of the *ELRG* the Minister and the Department will have access to a breadth of experts in employment rights and redundancy thus ensuring the State's legislative framework is robust.

IMPACT

As the context here is the intersection between insolvency and redundancy/employment rights legislation on the one hand and company law on the other, this area has presented certain complexities in terms of developing further safeguards and could result in unintended consequences. However, engagement with the CLRG, social partners and other Government Departments reduces the risk of unintended consequences.

Since the WRC was established, it has received 3,775 specific complaints seeking adjudication related to breaches of the 1977 Act. The Bill, once enacted, should not give rise to standalone complaints to the WRC as it is already an offence to effect redundancies prior to the end of the 30-day consultation period. As such, the impact, though demand-led, should be minimal.

The ELRG will play an important role in ensuring that the State's suite of employment rights and redundancy legislation remains relevant and fit for purpose and is updated to reflect international developments.

Conclusion

Option 2 is the preferred option.

4. Impact Analysis

4.1. National Competitiveness

This Bill seeks to enhance the protection of employees in a way that does not unduly impede enterprises in the conduct of their business.

4.2. Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities

The Bill should not have any adverse impact on socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities.

4.3. The environment

No particular impacts have been identified.

4.4. Significant policy change in an economic market including impacts on competition and consumers

No particular impacts have been identified.

4.5. North-South, East-West relations

No particular impacts have been identified.

4.6. The rights of citizens/human rights

The Bill will benefit employees who are facing collective redundancies arising due to the insolvency of their employer, by increasing transparency and engagement during the collective redundancy and liquidation processes. The Bill will also benefit all employees who are facing collective redundancies by further expanding their opportunities to seek redress where obligations are not complied with.

The establishment of the ELRG will create an important statutory advisory body to the Minister to ensure that the State's suite of employment rights and redundancy legislation remains relevant and fit for purpose and is updated to reflect international developments.

4.7. Compliance burden on third parties e.g., citizens and business

The compliance burden of the proposed changes for relevant groups, including employers and insolvency practitioners, is expected to be very low.

4.8. SME Test

The possible impact on SMEs arising from the proposed legislative changes has been considered in line with the SME (Micro, Small and Medium Enterprises) Test. This is an integral part of the European Commission's Better Regulation Guidelines since 2009. It asks each Member State to include an assessment of the burden on SMEs for relevant regulations and legislation.

While the Bill is focused on enhancing the protection of employees made redundant following insolvency, it should not be seen as a measure that will harm businesses and it is done in a way that does not unduly impede enterprises in the conduct of their business.

In respect of the employment law changes, collective redundancy rules only apply where there are at least 21 employees in the establishment. Therefore, the proposed changes will not impact on micro companies (0-10 employees) and only some small companies (11-49 employees). The proposed changes to collective redundancy rules are expected to have a minimal impact on SME employers.

As outlined in Section 5 below, the *Plan of Action* was developed in full consultation with both IBEC and ISME, to ensure SMEs' perspective was considered. Both groups are also represented on the CLRG.

5. Consultation

During the development of the *Plan of Action*, the then Ministers of State with responsibility for Employment Law and Company Law were respectively involved in consultations with the following stakeholders:

- Irish Congress of Trade Unions (ICTU);
- Irish Business and Employers Confederation (IBEC);
- Irish SME Association (ISME);
- Construction Industry Federation (CIF);
- Chambers Ireland;
- The Services, Industrial, Professional and Technical Union (SIPTU);
- Mandate Trade Union.

Consultations during the development of the *Plan of Action* included:

- Meeting held on 4 November 2020 with both Ministers of State, officials and stakeholders;
- Invitation for further written submissions on the issues discussed issued to stakeholders on 24 November 2020;
- Following analysis of written submissions received by the Department, further correspondence issued from the Ministers to stakeholders on 8 February 2021, updating them on the Department's workplan;
- Draft *Plan of Action* issued to stakeholders on 11 May 2021;
- Meeting held on 25 May 2021 with both Ministers of State, officials and stakeholders to discuss the *Plan of Action*. Social partners acknowledged the work undertaken by the Department and overall the Plan was well received;
- Plan published in June 2021.

During the development of the General Scheme of Bill, further consultations took place, including with:

- Restructuring and Insolvency Ireland: meeting held on 8 July 2022 to discuss certain employment law implications in the General Scheme for insolvency practitioners;
- Department of Social Protection (November 2022).

The *Plan of Action* and General Scheme were also informed by the work of the Company Law Review Group (CLRG), a statutory body made up of representatives from a wide range of stakeholders including representatives from the trade unions, business associations, banking and auditing bodies, as well as academics, legal practitioners and insolvency experts:

[Review of existing legislative provisions regarding the provision of information to creditors generally and in particular to employees](#) (March 2021)

[Report on the consequences of certain corporate liquidations and restructuring practices, including splitting of corporate operations from asset holding entities in group structures](#) (December 2021)

6. Enforcement and Compliance

APPROACH TO REDRESS FOR BREACHES OF PROTECTION OF EMPLOYMENT ACTS

Employee redress via the Workplace Relations Commission

As with the existing approach to enforcement of other employment rights, the changes to collective redundancy rules will be enforced by giving employees the right to bring a complaint to the Workplace Relations Commission (WRC), with an appeal to the Labour Court.

An adjudication officer who finds in the employee's favour may award compensation of up to four weeks' remuneration for breaches of the existing obligations under the Act to consult with and inform employee representatives (sections 9 and 10).

The Bill proposes the same level of compensation (a maximum of four weeks' remuneration) for breaches of section 14 of the Act.

In arriving at this figure, other legislation with similar maximum compensation levels was reviewed, including:

- Sections 9 and 10, Protection of Employment Act 1977
- Sections 3, 4, 5, 6 and 6C, Terms of Employment (Information) Act 1994
- Article 8, S.I. No. 131/2003 – European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
- Section 14, Sick Leave Act 2022

It is considered that the obligations under this Act are broadly in line with these comparators, and that the compensation should reflect this.

It is important to acknowledge that there are robust provisions within employment law already, should an employee be concerned that their redundancy is suspect or they are not in a genuine redundancy situation. The appropriate redress in such a circumstance is via the Unfair Dismissals Acts 1977 – 2015, not the Protection of Employment Act 1977. If the WRC finds that their dismissal was not a genuine redundancy, they can be awarded compensation of up to two years' remuneration.

Prosecutorial sanctions

Failure to adhere to the obligations under sections 9, 10, 12 and 14 of the Protection of Employment Act can result in employers being guilty of an offence. On summary conviction, they may be liable for a fine:

Section	Obligation	Offence under section	Maximum fine on conviction
9	Consult with employee reps	11	€5,000
10	Provide certain information to employee reps	11	€5,000
12	Notify the Minister of proposed collective redundancies	13	€5,000

Section	Obligation	Offence under section	Maximum fine on conviction
14	Not to effect collective redundancies prior to the expiry of the 30-day period following notification to the Minister	14(2)	€250,000

As the Bill is also imposing obligations on liquidators and similar appointees, it is important that a proportionate sanction is included should they fail to perform their obligations. The Bill amends sections 11 and 13, to provide that liquidators and similar appointees may be prosecuted for failure to fulfil their obligations under sections 9, 10 and 12. This will ensure an appropriate sanction is available in case of non-compliance.

The Department does not consider it proportionate to bring liquidators and similar appointees within the scope of the section 14(2) of the 1977 Act, for the following reasons:

- Liquidators and similar appointees are well experienced in managing their obligations under this Act and so a high level of compliance is expected. The risk of a prosecution taken under section 11 or 13 is a sufficient deterrent to have a dissuasive effect on poor professional practice on the part of the liquidator.
- The fine of €250,000 set out in section 14(2) is to ensure there is a more significant financial deterrent against unscrupulous behaviour by employers. This does not arise in collective redundancies precipitated by the insolvency of the employer, as the liquidator's role is to wind-up the company, and they must carry out their duties as assigned to them by law.

COMPANIES ACT 2014

The Companies Act 2014 includes a variety of provisions relating to enforcement and compliance. The Bill specifically provides for failure to comply with notice and information obligations in respect of the insolvent company's Statement of Affairs. Such provision is in keeping with the existing provisions of the Companies Act 2014.

7. Review

The Department will prepare a post-enactment report, as referenced in Standing Orders of both Houses of the Oireachtas, to review the functioning of an Act 12 months subject to, and following, enactment of the Bill.

The Bill if enacted will also be periodically reviewed in line with submissions received by the Department.

8. Publication

Following Government approval in May 2023, the Department published the General Scheme of Bill.

The Department will publish the Bill and this Regulatory Impact Analysis on its website.