

New Legislation Regulating Collective Redundancies Following Insolvency Now in Operation

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (the Act) quietly came into effect on 1st July 2024. The core aim of this legislation is to bolster the protection of Employees in collective redundancy situations.

Background

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

This commitment led to the development of the ‘Plan of Action on Collective Redundancies following Insolvency’ which was published in June 2021. The plan of action addressed matters relating to both employment rights and company law and concluded that the existing law be supplemented by way of:

- a range of amendments to employment law and company 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 Act implements the outstanding employment law and company law legislative commitments which were set out in the Plan of Action.

Amendments to the Protection of Employment Act 1977

The Protection of Employment Act 1977, which governs collective redundancy rules, has been amended to:

1. Define a ‘responsible person’ who will take on certain obligations under the Act where an Employer is insolvent. A responsible person can include a liquidator, a provisional liquidator, a receiver or any other person appointed by a court where they assume full control of the business.
2. Where collective redundancies are envisaged, require the responsible person to initiate consultations with Employees’ representatives with a view to reaching an agreement. Consultations should be at the earliest opportunity and in any event at least 30 days before the first notice of dismissal is given.
3. Oblige the responsible person to supply Employees’ representatives with all relevant information relating to the proposed redundancies.
4. Remove the exemption from notification requirements in respect of collective redundancies caused by the Employer’s insolvency. This means all collective redundancies are subject to a 30-day notification period before they take effect, including where the Employer is insolvent.

5. 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 applies 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.
6. Align the 1977 Act with case law of the Court of Justice of the European Union (CJEU), 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.
7. Provide that, where a liquidator or similar appointee is managing the collective redundancy process in an insolvency situation and they fail to comply with their duties under the Act, the WRC may prosecute them, with a maximum fine on conviction of €5,000.
8. Update the methods by which Employers can notify the Minister of proposed collective redundancies to include notification by email.

Establishment of the Employment Law Review Group (ELRG)

The Act also provides for the establishment of a statutory Employment Law Review Group (ELRG) which will advise the Minister all aspects of employment and redundancy law.

The ELRG will be an expert and technical advisory group, and this will be reflected in the membership of the Group, which should include members of the legal and insolvency professions, practitioners, academics and Ministerial nominees.

It is intended that bodies including those representing workers and Employers, will be invited to nominate a member for inclusion in the Group. Ministerial nominees will be appointed following a call for expressions of interest. It is intended that this will be open to all interested parties with qualifications and/ or professional experience in areas including employment law and/ or redundancy and insolvency law. Once the Chairperson and members are appointed, an inaugural meeting will be held.

Amendments to the Companies Act 2014

The Companies Act 2014, which underpins Ireland's modern and flexible corporate recovery and insolvency framework, has been amended to:

1. Improve the quality and circulation of information to Employees as creditors such as ensuring they have access, within a reasonable period, to the company's Statement of Affairs which is filed with the court and ensuring the provisional liquidator informs them of his/her appointment, explains the liquidation process and invites them to provide relevant information.
2. Ensure remedies for transactional avoidance are more accessible to creditors.

Key Takeaway

The Act helps to clarify the redundancy obligations of Organisations that are insolvent or seeking insolvency protection advice. Employers that are considering a collective redundancy scenario will need to carefully consider their obligations under this legislation as will insolvency practitioners who could face serious civil and criminal liability for failing to comply with their obligations as ‘responsible persons.’

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