



Number 27 of 2007

**PROTECTION OF EMPLOYMENT (EXCEPTIONAL
COLLECTIVE REDUNDANCIES AND RELATED
MATTERS) ACT 2007**

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, construction and collective citation.
2. Definitions.
3. Duration of effect of *Part 2* and related matters.

PART 2

EXCEPTIONAL COLLECTIVE REDUNDANCIES

4. What constitutes exceptional collective redundancies.
5. Redundancy Panel.
6. Reference to Redundancy Panel.
7. Request by Minister for opinion of Labour Court.
8. Hearings, and giving of opinions, by Labour Court.
9. Effect of opinion.
10. Extension of time during which dismissal may not take place.

PART 3

AMENDMENTS OF THE PROTECTION OF EMPLOYMENT ACT 1977

11. Amendment of section 2 (interpretation) of the Protection of Employment Act 1977.

[No. 27.] *Protection of Employment* [2007.]
(*Exceptional Collective Redundancies
and Related Matters*) Act 2007.

12. Amendment of section 9 (obligation on employer to consult employees' representatives) of the Protection of Employment Act 1977.
13. Further amendments (penalties) of the Protection of Employment Act 1977.

PART 4

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1967

14. Amendment of section 2 (interpretation) of the Redundancy Payments Act 1967.
15. Amendment of section 4 (classes of persons to which this Act applies) of the Redundancy Payments Act 1967.
16. Amendment of section 7 (general right to redundancy payment) of the Redundancy Payments Act 1967.
17. Amendment of section 38 (decisions by deciding officers) of the Redundancy Payments Act 1967.
18. Amendment of section 39 (Redundancy Appeals Tribunal and appeals and references thereto) of the Redundancy Payments Act 1967.
19. Further amendments (penalties) of the Redundancy Payments Act 1967.

PART 5

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1971

20. Repeal of section 3 (provisions relating to persons reaching qualifying age for old age pension) of the Redundancy Payments Act 1971.
21. Amendment of section 16 (offences relating to payments under Principal Act) of the Redundancy Payments Act 1971.

PART 6

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1979

22. Amendment of section 1 (definitions) of the Redundancy Payments Act 1979.
23. Repeal of section 5 (provisions relating to persons reaching qualifying age for old age pension) of the Redundancy Payments Act 1979.

PART 7

AMENDMENTS OF THE UNFAIR DISMISSALS ACT 1977

24. Amendment of section 1 (definitions) of the Unfair Dismissals Act 1977.

[2007.] *Protection of Employment* [No. 27.]
(*Exceptional Collective Redundancies*
and Related Matters) Act 2007.

25. Amendment of section 2 (exclusions) of the Unfair Dismissals Act 1977.
26. Amendment of section 5 (dismissal by way of lock-out or for taking part in strike) of the Unfair Dismissals Act 1977.

PART 8

AMENDMENTS OF THE EMPLOYMENT EQUALITY ACT 1998

27. Amendment of section 17 (compliance with statutory requirements, etc.) of the Employment Equality Act 1998.
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[No. 27.] *Protection of Employment* [2007.]
(*Exceptional Collective Redundancies*
and Related Matters) Act 2007.

ACTS REFERRED TO

Employment Equality Act 1998	1998, No. 21
Employment Equality Acts 1998 and 2004	
Equality Act 2004	2004, No. 24
European Parliament Elections Act 1997	1997, No. 2
Industrial Relations Act 1946	1946, No. 26
National Minimum Wage Act 2000	2000, No. 5
Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
Protection of Employment Act 1977	1977, No. 7
Protection of Young Persons (Employment) Act 1996	1996, No. 16
Redundancy Payments Act 1967	1967, No. 21
Redundancy Payments Act 1971	1971, No. 20
Redundancy Payments Act 1979	1979, No. 7
Redundancy Payments Acts 1967 to 2003	
Social Welfare Consolidation Act 2005	2005, No. 26
Taxes Consolidation Act 1997	1997, No. 39
Unfair Dismissals Act 1977	1977, No. 10
Unfair Dismissals Acts 1977 to 2005	
Unfair Dismissals (Amendment) Act 1993	1993, No. 22



Number 27 of 2007

**PROTECTION OF EMPLOYMENT (EXCEPTIONAL
COLLECTIVE REDUNDANCIES AND RELATED
MATTERS) ACT 2007**

AN ACT TO MAKE PROVISION, CONSEQUENT ON THE CONCLUSION OF THE TEN-YEAR FRAMEWORK SOCIAL PARTNERSHIP AGREEMENT 2006-2015 KNOWN AS “TOWARDS 2016”, FOR THE ESTABLISHMENT OF A REDUNDANCY PANEL AND THE REFERENCE TO IT OF CERTAIN PROPOSED COLLECTIVE REDUNDANCIES AND FOR RELATED ACTION BY THE MINISTER FOR ENTERPRISE, TRADE AND EMPLOYMENT, INCLUDING THE OBTAINING FROM THE LABOUR COURT OF OPINIONS ON THE NATURE OF PROPOSED COLLECTIVE REDUNDANCIES; TO REMOVE THE UPPER AGE LIMIT FOR ENTITLEMENT TO REDUNDANCY PAYMENTS; TO MAKE CONSEQUENTIAL AMENDMENTS OF THE PROTECTION OF EMPLOYMENT ACT 1977, THE REDUNDANCY PAYMENTS ACT 1967, THE REDUNDANCY PAYMENTS ACT 1971, THE REDUNDANCY PAYMENTS ACT 1979, THE UNFAIR DISMISSALS ACT 1977 AND THE EMPLOYMENT EQUALITY ACT 1998; AND TO MAKE FURTHER AMENDMENTS OF THOSE ACTS TO UPDATE PENALTIES AND FOR PURPOSES OF STATUTE-LAW REVISION.

[8th May, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007.

Short title,
construction and
collective citation.

(2) The Protection of Employment Act 1977, together with the Protection of Employees (Part-Time Work) Act 2001 and this Act (insofar as they apply to the first-mentioned Act), shall be construed together as one and may be cited together as the Protection of Employment Acts 1977 to 2007.

[No. 27.] *Protection of Employment* [2007.]
*(Exceptional Collective Redundancies
and Related Matters) Act 2007.*

(3) The Redundancy Payments Acts 1967 to 2003 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Redundancy Payments Acts 1967 to 2007.

(4) The Unfair Dismissals Acts 1977 to 2005 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Unfair Dismissals Acts 1977 to 2007.

(5) The Employment Equality Acts 1998 and 2004 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Employment Equality Acts 1998 to 2007.

Definitions.

2.—In this Act—

“employee representatives” has the same meaning as in section 2(1) of the Protection of Employment Act 1977;

“industrial action” means—

- (a) a cessation of work by any number or body of workers acting in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer done as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment, or
- (b) the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by that employer in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by that other employer, to accept terms or conditions of or affecting employment;

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

“Secretary General” means the Secretary General of the Department of Enterprise, Trade and Employment.

Duration of effect of *Part 2* and related matters.

3.—(1) Subject to this section, *Part 2* has effect only for the period of 3 years from the commencement of this Act.

(2) The Minister may, by order made before the expiration of the period mentioned in *subsection (1)* or of any extension of that period under this subsection, extend that period or periods for a further period of 3 years if—

- (a) both the Irish Congress of Trade Unions and the Irish Business and Employers Confederation have requested the extension; and
- (b) the Minister is satisfied that the continued operation of *Part 2* would be conducive to the continued orderly conduct of industrial relations.

(3) If—

- (a) on any day, *Part 2* ceases to have effect in accordance with *subsection (1)*, and
- (b) on that day, any action remains to be taken under that *Part* in relation to a redundancy proposal in respect of which action had commenced to be taken under that *Part*,

Part 2 continues in force to the extent necessary for completing the taking of that action, and any subsequent action provided for by that *Part*, in respect of that redundancy proposal and, for that purpose, the Redundancy Panel as constituted immediately before that day continues in existence for such time as is necessary for it to take any outstanding action in accordance with that *Part*.

PART 2

EXCEPTIONAL COLLECTIVE REDUNDANCIES

4.—(1) Subject to *subsection (2)*, dismissals proposed by an employer together constitute exceptional collective redundancies for the purposes of this *Part* if, were they to take effect, they would be dismissals of the kind referred to in section 7(2A) of the Redundancy Payments Act 1967 (inserted by *section 16*).

What constitutes exceptional collective redundancies.

(2) For the avoidance of doubt, it is declared that this *Part* does not apply to—

- (a) the employment of agency workers for temporary or recurring business needs, or
- (b) the use of outsourcing, contracting-out or other forms of business restructuring,

in circumstances other than those referred to in section 7(2A) of the Redundancy Payments Act 1967.

5.—(1) For the purposes of this *Part*, there is established a Redundancy Panel.

Redundancy Panel.

(2) The Redundancy Panel consists of the following members:

- (a) a Chairman appointed, in writing, by the National Implementation Body (being the body of that name established, under the aegis of the Department of the Taoiseach, to oversee the attainment and maintenance of industrial peace and stability);
- (b) a member appointed, in writing, by the Irish Congress of Trade Unions;
- (c) a member appointed, in writing, by the Irish Business and Employers Confederation.

(3) Each member of the Redundancy Panel shall have a deputy appointed, in writing, by the body by which that member was appointed, who shall act as a member of the panel on any occasion when that member is unable to attend a meeting of the panel, and,

[No. 27.] *Protection of Employment* [2007.]
(Exceptional Collective Redundancies
and Related Matters) Act 2007.

in *subsections (4) to (9)*, a reference to a member includes a reference to a deputy of a member.

(4) Subject to *subsections (5) to (10)*, a member—

- (a) holds office for such period, not exceeding 3 years, as is specified in the relevant instrument of appointment, and
- (b) is eligible for re-appointment.

(5) A member may resign by letter addressed to the relevant appointing authority, and the resignation shall take effect on the date of receipt of the letter.

(6) A member shall, unless he or she sooner dies, resigns or otherwise ceases to be a member, hold office until the expiration of his or her term of office.

(7) A person is not eligible to be appointed, or to continue to hold office, as a member of the Redundancy Panel if that person—

- (a) is, or accepts nomination as, a member of Seanad Éireann,
- (b) is, or is nominated as, a candidate for election as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) is regarded, under Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to that Parliament, or
- (d) is or becomes a member of a local authority,

and a member who ceases, under this subsection, to be eligible to continue to hold office as a member shall thereupon cease to be a member of the Redundancy Panel.

(8) The Government may, for stated reasons, at any time remove a member from office for misbehaviour or where they consider that—

- (a) the member has become incapable through ill health of effectively performing the functions of a member, or
- (b) the member's removal is necessary for the effective performance by the Redundancy Panel of its functions.

(9) A member shall cease to be a member on—

- (a) being adjudicated bankrupt,
- (b) making a composition or arrangement with creditors,
- (c) being sentenced to imprisonment on conviction on indictment, or
- (d) ceasing to be ordinarily resident in the State.

(10) Whenever a vacancy occurs in the office of a member of the Redundancy Panel, the vacancy shall be filled, for the unexpired portion of the member's term of office, by the member's deputy, and the relevant appointing body shall appoint a new deputy.

(11) The Redundancy Panel shall act by majority decision.

(12) Subject to *subsection (11)*, the practice and procedure of the Redundancy Panel shall be as determined by it.

(13) The Secretary General shall arrange for the provision to the Redundancy Panel of all secretarial and other services necessary for its efficient operation.

(14) A member of the Redundancy Panel shall be paid such remuneration (if any) as is determined by the Minister with the consent of the Minister for Finance.

6.—(1) At any time during the period of 30 days referred to in section 9 or 12 of the Protection of Employment Act 1977 (as the case requires), a proposal to create collective redundancies may be referred to the Redundancy Panel—

Reference to
Redundancy Panel.

- (a) by employee representatives acting with the approval of the majority of those whom they represent who are affected by the redundancy proposal, or
- (b) by the employer concerned,

by notice in writing addressed to the Chairman of the Panel in the care of the Secretary General and sent or delivered to the Secretary General at the principal office of the Department of Enterprise, Trade and Employment.

(2) The Secretary General shall arrange for a reference under *subsection (1)* to be forwarded without delay to the Chairman of the Redundancy Panel, and the Panel shall—

- (a) within 1 working day of receipt by the Chairman of the reference—
 - (i) inform the Minister of the fact, and
 - (ii) invite affected parties to make submissions to it in relation to the proposal,and
- (b) within 7 working days of receipt by the Chairman of the reference—
 - (i) give notice in writing to the Minister that either requests the Minister to seek an opinion from the Labour Court whether the proposal is a proposal to which this Part applies or states that the Panel is of the view that the conditions for the making of such a request that are set out in *subsection (3)* have not been satisfied, and
 - (ii) give a copy of that notice to the party from which the reference was received and other affected parties.

(3) The Redundancy Panel may not make a request to the Minister under *subsection (2)(b)(i)* unless—

[No. 27.] *Protection of Employment* [2007.]
(Exceptional Collective Redundancies and Related Matters) Act 2007.

- (a) it appears to the Panel that the proposed collective redundancies are exceptional collective redundancies, and
- (b) the Panel is satisfied that, in relation to the proposal, the party from which the reference was received—
 - (i) has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:
 - (I) established dispute-resolution procedures;
 - (II) procedures in place, or availed of by custom or usual practice, in the employment concerned;
 - (III) ordinary consultative procedures,
 - (ii) has acted reasonably and has not acted in a manner that, in the opinion of the Panel, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and
 - (iii) has not had recourse to industrial action since the proposal was referred to the Panel.

Request by Minister
for opinion of
Labour Court.

7.—(1) The Minister may, either—

- (a) within 7 working days of receiving a request from the Redundancy Panel under *section 6*, or
- (b) subject to *subsection (3)*, on the Minister's own initiative, in the public interest,

request the Labour Court to issue an opinion whether collective redundancies proposed by an employer constitute exceptional collective redundancies.

(2) In *subsection (1)(b)*, “public interest” includes—

- (a) public order and the interests of national security,
- (b) public health and safety,
- (c) the need to protect the labour market, and
- (d) the protection of statutory employment rights.

(3) The Minister may make a request under *subsection (1)(b)* only if—

- (a) it appears to the Minister that the proposed collective redundancies are exceptional collective redundancies, and
- (b) the relevant period specified in *subsection (4)* has not expired.

(4) For the purposes of *subsection (3)(b)*, the relevant period is—

- (a) if the period of 30 days specified in section 9(3) of the Protection of Employment Act 1977 has not expired and a reference to the Redundancy Panel has not been made under *section 6(1)* — that period of 30 days,
- (b) if a reference to the Redundancy Panel has been made under *section 6(1)* but the Panel has not made a request under *section 6(2)* — the period of 7 working days specified in *section 6(2)*.

8.—(1) Within 16 days of receiving a request under *section 7*, the Labour Court shall—

Hearings, and giving of opinions, by Labour Court.

- (a) hold a hearing into the matter, and
- (b) either—
 - (i) issue to the Minister its opinion whether the proposed collective redundancies are exceptional collective redundancies, or
 - (ii) report to the Minister that, by reason of *subsection (2)*, it is unable to issue an opinion, specifying in the report the circumstances attracting the operation of that subsection.

(2) The Court may not issue an opinion under *subsection (1)* unless it is satisfied that, in relation to the relevant proposal—

- (a) the party from which the reference to the Panel was received has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:
 - (i) established dispute-resolution procedures;
 - (ii) procedures in place, or availed of by custom or usual practice, in the employment concerned;
 - (iii) ordinary consultative procedures,
- (b) that party has acted reasonably and has not acted in a manner that, in the opinion of the Court, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and
- (c) no industrial action, on the part of that party, is current.

(3) For the purposes of this Part, section 21 of the Industrial Relations Act 1946 has effect as if in subsection (1) of that section “and under *Part 2* of the *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007*” were inserted after “for the purposes of any proceedings before it under this Act”.

(4) No appeal shall lie from an opinion given by the Labour Court under this section, but nothing in this section affects the power of the Employment Appeals Tribunal to make a decision on any question

[No. 27.] *Protection of Employment* [2007.]
(Exceptional Collective Redundancies
and Related Matters) Act 2007.

referred to it under section 39 of the Redundancy Payments Act 1967.

(5) The Minister shall, within 7 working days of receiving an opinion from the Labour Court under *subsection (1)*, notify affected parties, by such means as he considers appropriate, of the giving of the opinion and its content.

Effect of opinion.

9.—(1) Where—

- (a) the Labour Court issues an opinion that collective redundancies proposed by an employer are exceptional collective redundancies,
- (b) the employer proceeds with the dismissals on the same basis as in the relevant proposal, and
- (c) the employer applies to the Minister for a rebate under Part III of the Redundancy Payments Act 1967,

the Minister shall have regard to the opinion of the Labour Court when considering the employer's application for the rebate.

(2) If the Minister refuses to pay the rebate, or pays a reduced rebate, the exemption from income tax provided by section 203 of the Taxes Consolidation Act 1997 does not apply in relation to lump sum payments made in pursuance of section 19 of the Redundancy Payments Act 1967 by the employer to employees dismissed as mentioned in *subsection (1)*.

(3) Section 7 of the Unfair Dismissals Act 1977 has effect in relation to a dismissal that is one of a number of dismissals included in a collective redundancy that is determined by the Labour Court, in an opinion given under *section 8*, to be an exceptional collective redundancy as if—

- (a) the following paragraph were substituted for paragraph (c) of subsection (1) of section 7:

“(c) payment by the employer to the employee of such compensation as is just and equitable having regard to all the circumstances but does not exceed in amount remuneration in respect of the employment from which the employee was dismissed (calculated in accordance with regulations under section 17 of this Act) for—

- (i) in the case of an employee who, at the date of the dismissal, had not more than 20 years' continuous service — 208 weeks, or
- (ii) in the case of an employee who, at the date of the dismissal, had more than 20 years' continuous service — 260 weeks.”,

and

- (b) the following subsection were substituted for subsection (2) of section 7:

“(2) Without prejudice to the generality of subsection (1), in determining any reduction in the amount of compensation otherwise payable under paragraph (c) of that subsection regard shall be had only to the amount (if any) of severance or redundancy payment accepted by the employee in relation to the dismissal.”.

10.—(1) The first dismissal under a proposal for collective redundancies that is referred to the Redundancy Panel under *section 6(1)* shall not take effect earlier than the expiration of the latest of whichever of the following periods is applicable:

Extension of time during which dismissal may not take place.

- (a) the period of 7 working days commencing on the day on which reference of the proposal is received by the Panel;
- (b) the period of 7 working days commencing on the day on which a request made by the Redundancy Panel under *section 6(2)* is received by the Minister; or
- (c) the period of 16 days commencing on the day on which a request made by the Minister under *section 7(1)* is lodged with the Labour Court.

(2) Nothing in subsection (1) affects either—

- (a) the operation of *section 9(3)* or *section 12(1)* of the Protection of Employment Act 1977, or
- (b) the right of an employer to dismiss an employee otherwise than in pursuance of the proposal for collective redundancies.

(3) An employer who effects a dismissal in pursuance of a proposal for collective redundancies before the expiration of such of the periods specified in *subsection (1)* and in *sections 9(3)* and *section 12(1)* of the Protection of Employment Act 1977 as are applicable is guilty of an offence and liable on conviction on indictment to a fine not exceeding €250,000.

PART 3

AMENDMENTS OF THE PROTECTION OF EMPLOYMENT ACT 1977

11.—Section 2 of the Protection of Employment Act 1977 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

Amendment of section 2 (interpretation) of the Protection of Employment Act 1977.

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

12.—Section 9 of the Protection of Employment Act 1977 is amended in subsection (3) by substituting “before the first notice of dismissal is given” for “before the first dismissal takes effect”.

Amendment of section 9 (obligation on employer to consult employees’ representatives) of the Protection of Employment Act 1977.

[No. 27.] *Protection of Employment* [2007.]
(Exceptional Collective Redundancies and Related Matters) Act 2007.

Further amendments (penalties) of the Protection of Employment Act 1977.

13.—The Protection of Employment Act 1977 is amended in each of the provisions of it specified in the Table to this section by substituting the amount specified in column (3) of that Table for the amount specified in column (2) of that Table opposite the number of the provision concerned.

TABLE

(1) Provision	(2) Delete—	(3) Substitute—
Section 11	£1,500	€5,000
Section 13	£1,500	€5,000
Section 14	€12,500	€250,000
Section 17(3)	£1,500	€5,000
Section 18(3)	£1,500	€5,000

PART 4

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1967

Amendment of section 2 (interpretation) of the Redundancy Payments Act 1967.

14.—Section 2 of the Redundancy Payments Act 1967 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

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

Amendment of section 4 (classes of persons to which this Act applies) of the Redundancy Payments Act 1967.

15.—Section 4 of the Redundancy Payments Act 1967 is amended by substituting the following for subsection (1):

“(1) Subject to this section and to section 47, this Act applies to—

- (a) employees employed in employment which is insurable for all benefits under the Social Welfare Consolidation Act 2005,
- (b) employees who were so employed in such employment in the period of four years ending on the date of termination of employment, and
- (c) employees who have attained the age of 66 years and are in employment that would be insurable for all benefits under the Social Welfare Consolidation Act 2005 but for—
 - (i) their attainment of that age, or
 - (ii) the fact that the employment concerned is excepted employment by reason of paragraph 2, 4 or 5 of Part 2 of Schedule 1 to that Act.”.

16.—Section 7 of the Redundancy Payments Act 1967 is amended by inserting the following after subsection (2):

Amendment of section 7 (general right to redundancy payment) of the Redundancy Payments Act 1967.

“(2A) For the purposes of subsection (1), an employee who is dismissed shall be taken not to be dismissed by reason of redundancy if—

- (a) the dismissal is one of a number of dismissals that, together, constitute collective redundancies as defined in section 6 of the Protection of Employment Act 1977,
- (b) the dismissals concerned were effected on a compulsory basis,
- (c) the dismissed employees were, or are to be, replaced, at the same location or elsewhere in the State, (except where the employer has an existing operation with established terms and conditions) by—
 - (i) other persons who are, or are to be, directly employed by the employer, or
 - (ii) other persons whose services are, or are to be, provided to that employer in pursuance of other arrangements,
- (d) those other persons perform, or are to perform, essentially the same functions as the dismissed employees, and
- (e) the terms and conditions of employment of those other persons are, or are to be, materially inferior to those of the dismissed employees.”.

17.—Section 38 of the Redundancy Payments Act 1967 is amended in subsection (1) by substituting the following for paragraphs (a) to (f):

Amendment of section 38 (decisions by deciding officers) of the Redundancy Payments Act 1967.

- “(a) as to who is the employer of an employee,
- (b) in relation to the payment from the Social Insurance Fund of—
- (i) rebates to employers under section 29, or
 - (ii) lump sums to employees under section 32,
- or
- (c) on such other matters arising under this Act as are prescribed.”.

18.—Section 39 of the Redundancy Payments Act 1967 is amended in subsection (16) by deleting “in the prescribed manner”.

Amendment of section 39 (Redundancy Appeals Tribunal and appeals and references thereto) of the Redundancy Payments Act 1967.

[No. 27.] *Protection of Employment* [2007.]
*(Exceptional Collective Redundancies
and Related Matters) Act 2007.*

Further
amendments
(penalties) of the
Redundancy
Payments Act 1967.

19.—The Redundancy Payments Act 1967 is amended in each of the provisions of it specified in the Table to this section by substituting the amount specified in column (3) of that Table for the amount specified in column (2) of that Table opposite the number of the provision concerned.

TABLE

(1) Provision	(2) Delete—	(3) Substitute—
Section 17(3)	€3,000	€5,000
Section 18(4)	€3,000	€5,000
Section 36(3)	€3,000	€5,000
Section 39(17)(e)	£150	€5,000

PART 5

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1971

Repeal of section 3
(provisions relating
to persons reaching
qualifying age for
old age pension) of
the Redundancy
Payments Act 1971.

20.—Section 3 of the Redundancy Payments Act 1971 is repealed.

Amendment of
section 16 (offences
relating to
payments under
Principal Act) of
the Redundancy
Payments Act 1971.

21.—Section 16 of the Redundancy Payments Act 1971 is amended in subsections (1) and (2) by substituting “€5,000” for “£300”.

PART 6

AMENDMENTS OF THE REDUNDANCY PAYMENTS ACT 1979

Amendment of
section 1
(definitions) of the
Redundancy
Payments Act 1979.

22.—Section 1 of the Redundancy Payments Act 1979 is amended by substituting the following for the definition of “the Minister”:

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

Repeal of section 5
(provisions relating
to persons reaching
qualifying age for
old age pension) of
the Redundancy
Payments Act 1979.

23.—Section 5 of the Redundancy Payments Act 1979 is repealed.

PART 7

AMENDMENTS OF THE UNFAIR DISMISSALS ACT 1977

Amendment of
section 1
(definitions) of the
Unfair Dismissals
Act 1977.

24.—Section 1 of the Unfair Dismissals Act 1977 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

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

25.—(1) Section 2 of the Unfair Dismissals Act 1977 is amended in subsection (2)—

Amendment of
section 2
(exclusions) of the
Unfair Dismissals
Act 1977.

- (a) by substituting “Subject to subsection (2A), this Act” for “This Act”, and
- (b) by deleting the proviso (commencing with the words “Provided that where, following dismissal”, including the interpretative passage commencing with the words “In this proviso ‘antecedent contract’,”).

(2) Section 2 of the Unfair Dismissals Act 1977 is amended by inserting the following after subsection (2):

“(2A) Where, following dismissal consisting only of the expiry of the term of a contract of employment of a kind mentioned in subsection (2) (‘the prior contract’) without the term being renewed under the contract or the cesser of the purpose of the contract—

- (a) the employee concerned is re-employed by the employer concerned within 3 months of the dismissal under a contract of employment of that kind made between the employer and the employee (‘the subsequent contract’) and the nature of the employment is the same as or similar to that of the employment under the prior contract,
- (b) the employee is dismissed from the employment,
- (c) the dismissal consisted only of the expiry of the term of the subsequent contract without the term being renewed under the contract or the cesser of the purpose of the contract, and
- (d) in the opinion of the rights commissioner, the Tribunal or the Circuit Court, as the case may be, the entry by the employer into the subsequent contract was wholly or partly for, or was connected with, the purpose of the avoidance of liability under this Act,

then—

- (i) this Act shall, subject to its other provisions, apply to the dismissal, and
- (ii) the term of the prior contract and of any antecedent contracts shall be added to that of the subsequent contract for the purpose of the ascertainment under this Act of the period of service of the employee with the employer and the period so ascertained shall be deemed for those purposes to be one of continuous service.

(2B) In subsection (2A), ‘antecedent contract’, in relation to a prior contract, means—

- (a) a contract of employment of the kind mentioned in subsection (2) the term of which expired not more than 3 months before the commencement of the prior contract, or

[No. 27.] *Protection of Employment* [2007.]
(Exceptional Collective Redundancies and Related Matters) Act 2007.

- (b) each of a series of contracts the term of the last of which expired not more than 3 months before the commencement of that of the prior contract and the term of the other or of each of the other contracts in the series expired not more than 3 months before the commencement of that of the other, or the next, contract in the series,

being a contract or contracts made between the employer and the employee who were parties to the prior contract and the nature of the employment under which was the same as or similar to that of the employment under the prior contract.”.

(3) Section 2 of the Unfair Dismissals Act 1977 is amended in subsection (5) by substituting “subsection (2A)” for “the proviso (inserted by the Unfair Dismissals (Amendment) Act, 1993) to subsection (2) of this section”.

Amendment of section 5 (dismissal by way of lock-out or for taking part in strike) of the Unfair Dismissals Act 1977.

26.—Section 5 of the Unfair Dismissals Act 1977 is amended by inserting the following after subsection (2):

“(2A) Without prejudice to the applicability of any of the provisions of section 6 to the case, where—

- (a) an employee—
- (i) is deemed by subsection (1) to have been dismissed by reason of a lock-out, or
 - (ii) is dismissed for taking part in a strike or other industrial action,
- and
- (b) none of those who were locked out, or took part in the strike or industrial action, were re-engaged,

in determining whether, in those circumstances, the dismissal is an unfair dismissal, the rights commissioner, the Tribunal or the Circuit Court, as the case may be, shall have regard, for that purpose only, to—

- (i) the reasonableness or otherwise of the conduct (whether by act or omission) of the employer or employee in relation to the dismissal,
- (ii) the extent (if any) of the compliance or failure to comply by the employer with the procedure referred to in section 14(1),
- (iii) the extent (if any) of the compliance or failure to comply by the employer or the employee with provisions of any code of practice referred to in section 7(2)(d), and
- (iv) whether the parties have adhered to any agreed grievance procedures applicable to the employment in question at the time of the lock-out, strike or industrial action.”.

[2007.] *Protection of Employment* [No. 27.]
(*Exceptional Collective Redundancies*
and Related Matters) Act 2007.

PART 8

AMENDMENTS OF THE EMPLOYMENT EQUALITY ACT 1998

27.—(1) The amendment of section 17 of the Employment Equality Act 1998 made by paragraph (b) of section 10 of the Equality Act 2004 is deemed to have had effect from the commencement of that paragraph as if “inserting the following subsection after subsection (3)” had appeared instead of “substituting the following subsection for subsection (4)”. Amendment of section 17 (compliance with statutory requirements, etc.) of the Employment Equality Act 1998.

(2) Section 17 of the Employment Equality Act 1998 is amended by substituting the following subsection for subsection (4):

“(4) In relation to discrimination on the age ground, nothing in this Act shall render unlawful any act done in compliance with—

(a) the Protection of Young Persons (Employment) Act 1996, or

(b) the National Minimum Wage Act 2000.”.