



**An Bille um Chosaint Fostaithe (Dócmhainneacht
Fostóirí) (Leasú), 2025**
**Protection of Employees (Employers' Insolvency)
(Amendment) Bill 2025**

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE UM CHOSAINT FOSTAITHE
(DÓCMHAINNEACHT FOSTÓIRÍ) (LEASÚ), 2025
PROTECTION OF EMPLOYEES (EMPLOYERS'
INSOLVENCY) (AMENDMENT) BILL 2025**

EXPLANATORY MEMORANDUM

The Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Introduction

The policy objectives of the Bill are to:

1. Ensure Directive 2008/94/EC is fully transposed into Irish law;
2. Further enhance the protection of employees in the event of their employer's insolvency;
3. Ensure the Insolvency Payments Scheme's operation aligns with broader Government policy on personal insolvency;
4. Further improve the operation and administration of the Insolvency Payments Scheme by ensuring policy certainty in how the salary ceiling is applied to certain payments.

The Bill consists of three Parts. A summary of the Bill's provisions is set out below.

PART 1: Preliminary and General

Section 1 of the Bill provide for preliminary and general provisions setting out the short title of the Bill and how the Bill is commenced.

Section 2 also defines the Principal Act as the Protection of Employees (Employers' Insolvency) Act 1984.

Section 3 provides for a transitional provision for certain claims submitted to the Insolvency Payments Scheme but not finalised prior to the Bill's commencement.

PART 2: Amendments of Principal Act

Section 4 inserts new definitions and updates other standard definitions in the Principal Act. It also amends the Principal Act's definition of insolvency. The definition now includes an employer who is deemed insolvent by the Minister under section 4E (inserted by section 6, below), which deals with scenarios where an employer ceases trading without formally winding up their business (such as by entering liquidation or bankruptcy). It also includes Historical Deemed Insolvency cases which are dealt with under section 4F (see section 6). These two new forms of Deemed Insolvency address the Supreme Court's decision in *Glegola*

which found that Article 2(1) of Directive 2008/94/EC was not fully transposed into Irish law. The last form of insolvency included is an employer who enters into an insolvency arrangement as defined in the Personal Insolvency Act 2012, which are debt management solutions for individuals as an alternative to bankruptcy.

Section 5 updates how the date of insolvency is defined in the Principal Act for these new types of insolvency.

Section 6 inserts eight new sections (sections 4A – 4H) into the Principal Act.

Section 4A allows an employee or a person acting on their behalf to serve written notice on their employer seeking payment of monies due.

Section 4B allow an employee to apply to the Minister (“a deeming application”) to have their employer deemed insolvent if their employer has not paid them the monies due after 8 weeks. It sets out the mandatory and optional information to be provided along with the application. It also sets out the circumstances where the Minister is not required to go through the deemed insolvent process. This occurs where the employer is already insolvent (e.g. in liquidation or receivership) or if the employee is not in insurable employment.

Section 4C requires the Minister to notify the employer when a deeming application is made. If an employer wishes to input into the process, they must reply within 4 weeks of the notification.

Section 4D permits an employer to provide a written response to the Minister as part of the deeming application. It sets out the types of information that the employer may provide. It allows an employer to request further information on the application from the Minister. It also provides that the time period for the employer to respond is paused while the Minister is providing further information to the employer.

Section 4E provides for the new deemed insolvent process. It sets out the matters the Minister must have regard to when considering whether to deem an employer insolvent. This includes information provided by the employee and the employer, the employer’s taxpayer information, and information held by the CRO. It requires the Minister to notify the employee of the outcome of the process; the employer is also notified where they have engaged with the process. It specifies that a finding of deemed insolvency under this section does not mean the employer is insolvent for any other purpose.

Section 4F provides for the deemed insolvent process for historical applications. This section ensures employees of employers who ceased trading without formally winding up prior to the Bill’s commencement are not disadvantaged by the incomplete transposition of Article 2(1) of Directive 2008/94/EC. This covers claims between the original Directive transposition date (22 October 1983) and the commencement of this Bill. It imposes a time limit of 2 years for applications to be made (extendable by a further 2 years in exceptional circumstances). It specifies that a finding of deemed insolvency under this section does not mean the employer is insolvent for any other purpose. It also sets out the circumstances where the Minister is not required to go through the Historical Deemed Insolvent process. This includes if the employer is already insolvent (e.g. in liquidation or receivership) or if the employee is not in insurable employment.

Section 4G specifies how notices may be served on the employer.

Section 4H sets out how personal data is treated. This includes the sharing of data from Revenue and the CRO to enable the Minister to determine whether an employer should be deemed insolvent or not.

Section 7 amends section 6 of the Principal Act which relates to applications for payment of employees' pay-related entitlements. This includes changes to the application process where the employer is deemed insolvent or is in an insolvency arrangement within the meaning of the Personal Insolvency Act 2012. These changes reflect the specific circumstances of these types of insolvencies. It also amends certain definitions used in the section.

This section also updates how a salary limit is applied to all payments under this section. This change addresses a Court of Appeal judgment, which found that the longstanding approach used to cap payments relating to certain employment rights awards was ultra vires. The rationale for this change is to bring legal certainty and consistency to how such awards are treated. This will ensure that the treatment of awards is not different based solely on minor differences in the way that they are described in an adjudication or judgment.

Section 8 amends section 7 of the Principal Act by specifying how an employee's claim for outstanding pension contributions is treated when the employer is in an insolvency arrangement within the meaning of the Personal Insolvency Act 2012.

Section 9 amends section 8 of the Principal Act to allow the Minister to request further information from an employee to assist in deciding an application.

Section 10 amends section 9 of the Principal Act by specifying that certain decisions may not be appealed to the Workplace Relations Commission (WRC). This relates to applications where the employer has entered into an insolvency arrangement within the meaning of the Personal Insolvency Act 2012. This is a separate court-supervised process for determining the debts, and as such should not be subject to further review by the WRC. This also relates to where, under the Deemed Insolvent process, the employer has disputed the employee's entitlement to certain debts. In such cases, the employee will need to make a complaint separately to the WRC against the employer to establish the debts are genuine.

Section 11 is a technical amendment to section 10 of the Principal Act to reflect other changes made in the Bill.

Section 12 amends section 11 of the Principal Act by allowing the Minister to vary, by order, the number of weeks that an employer has to pay a debt under section 4A.

PART 3: Amendment of Employment Equality Act

Section 13 amends section 103 of the Employment Equality Act 1998 to include Circuit Court awards for gender discrimination as "relevant compensation". This ensures such awards are considered a debt under section 6 of the Principal Act and corrects a 2015 amendment that omitted such awards from the Principal Act.

*An Roinn Fiontar, Trádála agus Fostaíochta
Bealtaine, 2025.*