



Number 12 of 2017

Competition (Amendment) Act 2017



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SCHEDULE

[No. 12.]

Competition (Amendment) Act 2017.

[2017.]

ACTS REFERRED TO

Competition Act 2002 (No. 14)

Competition Acts 2002 to 2014

Industrial Relations (Amendment) Act 2001 (No. 11)

Industrial Relations Act 1946 (No. 26)



Number 12 of 2017

COMPETITION (AMENDMENT) ACT 2017

An Act to amend the Competition Act 2002 to provide that section 4 of that Act shall not apply to collective bargaining and agreements in respect of certain categories of workers; and to provide for related matters. [7th June, 2017]

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Principal Act” means the Competition Act 2002.

Application of section 4 of Principal Act to collective bargaining and agreements in respect of certain categories of workers

2. The Principal Act is amended by the insertion of the following Part after Part 2A:

“PART 2B

APPLICATION OF SECTION 4 TO COLLECTIVE BARGAINING AND AGREEMENTS IN RESPECT OF CERTAIN CATEGORIES OF WORKERS

Definitions

15D. In this Part—

‘collective bargaining’ has the same meaning as it has in the Industrial Relations (Amendment) Act 2001;

‘false self-employed worker’ means an individual who—

- (a) performs for a person (‘other person’), under a contract (whether express or implied and if express, whether orally or in writing), the same activity or service as an employee of the other person,
- (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship,
- (c) is required to follow the instructions of the other person regarding the time, place and content of his or her work,
- (d) does not share in the other person’s commercial risk,

- (e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her, and
- (f) for the duration of the contractual relationship, forms an integral part of the other person's undertaking;

'fully dependent self-employed worker' means an individual—

- (a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and
- (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons;

'relevant category of self-employed worker' means—

- (a) a class of worker specified in Schedule 4, or
- (b) a class of false self-employed worker or fully dependent self-employed worker specified in an order made by the Minister under section 15F;

'trade union' has the same meaning as it has in the Industrial Relations Act 1946.

Collective bargaining and agreements in respect of certain categories of workers

15E. Section 4 shall not apply to collective bargaining and agreements in respect of a relevant category of self-employed worker.

Prescribed relevant category of self-employed worker

15F. (1) A trade union which represents a class of—

- (a) false self-employed worker, or
- (b) fully dependent self-employed worker,

may, for the purposes of collective bargaining and agreements on behalf of the class of worker so represented, apply to the Minister in accordance with this section, to prescribe such class of false self-employed worker or fully dependent self-employed worker for the purposes of this Part.

- (2) An application by a trade union under subsection (1) shall be made in the manner specified by the Minister and shall be accompanied by evidence to show—
 - (a) that the class of false self-employed worker or fully dependent self-employed worker, as the case may be, the subject of the application, falls within the definition of false self-employed worker or fully dependent self-employed worker, as the case may

be, and

- (b) that the prescribing of such class of false self-employed worker or fully dependent self-employed worker, as the case may be—
 - (i) will have no or minimal economic effect on the market in which the class of self-employed worker concerned operates,
 - (ii) will not lead to or result in significant costs to the State, and
 - (iii) will not otherwise contravene the requirements of this Act or any other enactment or rule of law (including the law in relation to the European Union) relating to the prohibition on the prevention, restriction or distortion of competition in trade in any goods or services.
- (3) Subject to subsection (5), where, in relation to an application under subsection (1), the Minister is satisfied—
 - (a) of the matters referred to in paragraphs (a) and (b) of subsection (2), and
 - (b) that it is appropriate to do so,
he or she may prescribe by order the class of false self-employed worker or fully dependent self-employed worker, as the case may be, as a relevant category of self-employed worker.
- (4) Where the Minister is not satisfied in accordance with subsection (3), he or she shall refuse an application under subsection (2).
- (5) An order under subsection (3) shall only be made after consultation by the Minister with—
 - (a) such other Minister of the Government who, in the opinion of the Minister, having regard to the functions of that other Minister of the Government, ought to be consulted, and
 - (b) any other person or body who, in the opinion of the Minister, having regard to the functions of that other person or body, ought to be consulted.
- (6) Where a class of false self-employed worker or fully dependent self-employed worker has been prescribed by the Minister under this section and, since the making of the order—
 - (a) the market conditions or circumstances which pertained to the making of that order have changed substantially, or
 - (b) new information relevant to the application which was the subject of the order becomes available to the Minister,
the Minister may, if he or she is of the opinion that it is no longer appropriate for the class of false self-employed worker or fully dependent self-employed worker concerned to be so prescribed,

revoke the prescription of the relevant category of self-employed worker by order.

- (7) Whenever the Minister proposes to make an order under subsection (6), he or she—
 - (a) shall inform in writing the trade union who made the application concerned of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under subsection (8),
 - (b) may invite such other persons as he or she considers appropriate to make submissions in respect of his or her proposal within such a period as he or she may specify,
 - (c) shall, in a case where the Minister consulted another Minister of the Government or other person or body under subsection (5) in respect of the making of an order under subsection (3), the subject of the proposal, consult with that Minister of the Government or person or body in respect of the proposal concerned, and
 - (d) shall cause notice of the proposal to be published on the Department's website and in one national newspaper circulating within the State.
- (8) A trade union notified under subsection (7)(a) or other person or body referred to in subsection (7)(b) may make a submission to the Minister within the period (if any) specified by the Minister under subsection (7)(a) or (b), as may be appropriate, regarding the proposal setting out the reasons why the order should or should not be made.
- (9) The Minister shall consider any submission made to him or her under subsection (8) before making an order under subsection (6).
- (10) Where the Minister makes an order under subsection (3) or (6), he or she shall cause notice of the making of the order to be published on the Department's website and in one national newspaper circulating within the State.”.

Amendment of Principal Act

3. The Principal Act is amended by the insertion of the text set out in the *Schedule* as Schedule 4 to that Act.

Short title, collective citation and commencement

4. (1) This Act may be cited as the Competition (Amendment) Act 2017.
- (2) This Act and the Competition Acts 2002 to 2014 may be cited together as the Competition Acts 2002 to 2017.
- (3) Subject to *subsection (4)*, this Act shall come into operation on such day or days as

the Minister for Jobs, Enterprise and Innovation may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

- (4) This Act shall come into operation no later than 3 months after the date of its passing.

SCHEDULE

Section 3

“SCHEDULE 4

RELEVANT CATEGORIES OF SELF-EMPLOYED WORKER

1. Actors engaged as voice-over actors
2. Musicians engaged as session musicians
3. Journalists engaged as freelance journalists”.