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**AN BILLE UM ÁISEANNA SAOTHAIR (LEASÚ) 2009  
LABOUR SERVICES (AMENDMENT) BILL 2009**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The main purpose of this Bill is to effect a number of amendments to the Labour Services Act, 1987 in order to improve the effectiveness and governance of the board of FÁS and strengthen the accountability of the Director General of FÁS to the Oireachtas.

It is proposed to make the following amendments:

- Reduce the size of the board from 17 members to 11 members;
- Change the composition of the board by providing that the Minister for Enterprise, Trade and Employment may select the members of the board, in consultation with the Minister for Social and Family Affairs and the Minister for Education and Science in a non-prescribed manner based on a person's particular talents and experience;
- Include the Director General as an ex-officio member of the board;
- Introduce a rolling system of appointments to the board;
- Implement the recommendations of the Committee of Public Accounts relating to the accountability of the Director General of FÁS and the fiduciary duties of directors appointed by the Minister;
- Introduce provisions relating to the disclosure of interests by board members and the staff of FÁS.

**Provisions of Bill**

*Section 1* provides for the definitions associated with the Bill.

*Section 2* provides for the insertion of the definition of "material interest" which will be construed in accordance with section 2(3) of the Ethics in Public office Act 1995 and a definition of "serious wrongdoing".

*Section 3* provides that the Director General of FÁS shall be eligible to serve not more two terms in office of up to five years each. This includes a term of office commenced or completed before the commencement of this Bill. This section also provides that the Director General shall, “ex officio” be a member of the board of FÁS.

*Section 4* provides for the accountability of the Director General of FÁS to the Committee of Public Accounts. This section provides for the Director General to give evidence to the Committee on the regularity and propriety of the transactions recorded in any accounts subject to audit, the economy and efficiency of FÁS in the uses of its resources, the systems and procedures employed by FÁS for the purpose of evaluating the effectiveness of its operations and any matters affecting FÁS in a special report of the Comptroller and Auditor General.

*Section 5* provides for the accountability of the Director General of FÁS to other committees of the Oireachtas. This section provides for the Director General to attend any Committee appointed by either or both Houses of Oireachtas and give an account of the general administration of FÁS.

*Section 6* provides for a number of requirements in relation to disclosure and conflicts of interests in respect of the members of the board and staff of FÁS. This section places an obligation to disclose a material interest in any decision being made by FÁS and also to refrain from influencing the decision making process where such a material interest exists. This section also sets out the consequences for breaches of this section by FÁS staff, which includes dismissal.

*Section 7* section provides protection from civil liability for employees of FÁS who bona fide report offences being committed under any enactment or any wrongdoing in relation to FÁS to the Garda Síochána or to a member of the board. This section also makes it an offence for anyone to report in bad faith to any of those persons. In respect of directions given by the Minister, an employee will have the same protection if he/she reports a contravention of these directions to the Minister.

*Section 8* is an amendment to Section 13 of the labour Services Act 1987 to provide for the removal of the prohibition on the disclosure of information obtained by a member of the board in the course of his/her duties in certain circumstances. The current legislation prohibits the disclosure of information with limited exceptions. This amendment will permit the disclosure of information specifically to the Minister for Enterprise, Trade and Employment and will remove any doubt about there being a legal barrier to a member of the board reporting issues of concern to the Minister.

*Section 9* provides for restructuring the board of FÁS in a number of ways. The board is considered large in comparison to many non-commercial semi-State boards and in order to streamline the board it is proposed to reduce its size from 17 (16 ordinary members plus a chairman) to 11 (10 ordinary members including the Director General as an ex-officio member plus a chairman).

The Bill will provide for a departure from the current model of 17 members where nominations can be made by other bodies (trade unions and employers nominate 4 members each, and employees of FÁS elect 2 staff members to the board) to a model of 11 members where the Minister for Enterprise, Trade and Employment, in consultation with the Minister for Social and Family Affairs and the

Minister for Education and Science, will select the Chair and 9 ordinary members based on their ability and experience, the other member being the Director General. Membership of the board will be limited to 2 terms of not more than five years each. In addition, in order to facilitate the development of fresh ideas and experience this section also provides for a rolling system of appointments to the board.

This section also includes a provision to amend paragraph 12 of the First Schedule of the Labour Service Act, 1987. The purpose of this amendment is to update and strengthen the regulation around the dismissal of a member of the board and is in keeping with current legislation in this area. The amendment provides that the Minister may remove a member of the board for the following reasons:

- The member is not adequately performing his functions;
- A material conflict of interest exists in relation to the performance by the member of his functions;
- The removal of a member is necessary or expedient for the effective performance by FÁS of its functions;
- A member of the board has contravened the provisions in relation to disclosure of interest as provided for in section 6 of the Bill.

*Section 10* provides for the repeal of Part II of the Schedule to Labour Services Act, 1987, as employees of FÁS will no longer be appointed to the board following election as described therein.

*Section 11* provides for redress for penalisation contrary to the provisions contained in Section 7 of this Bill. This section provides comprehensive protection for employees against penalisation such as suspension, dismissal, demotion, coercion or intimidation by their employers for bona fide reporting of matters under this section. An employee may make a complaint to a Rights Commissioner if they consider that are being penalised by their employer for reporting breaches of legislation or serious wrongdoing in relation to FÁS. The right of appeal to the Labour Court by the employer or employee of any decision of the Rights Commissioner in the context of this provision is also contained in this section.

*Section 12* provides for the Schedule to the Labour Services Act, 1987 to become Schedule 1.

*Section 13* refers to the short title, citation and commencement.

### **Financial Implications of the Bill**

The Bill has no direct financial implications for the Exchequer.

*An Roinn Fiontar, Trádála agus Fostaíochta,  
Deireadh Fómhair, 2009.*