

17 Kildare Street,
Dublin 2.

Mr Justice John Quirke,
Law Reform Commission,
35-39 Shelbourne Road,
Dublin 4.

29th September 2017

PROPOSED NEW PROGRAM OF LAW REFORM

Dear Justice Quirke,

The measures proposed by ISME in respect of the next program of law reform are:

1. The enactment of a statutory offence of perjury. We have already submitted this paper¹ to your office, since we presented it to the Minister of Justice earlier this year. While our particular interest in this issue is motivated by insurance cost, we believe the absence of a codified offence of perjury has knock-on effects on all white-collar crime, and legislation is long overdue.
2. Amendment of the Protected Disclosures Act 2014, to prevent it being used in the first instance in an employment situation where recourse to normal procedures, e.g. company procedures; the Safety Health and Welfare at Work Act have not been exhausted. We are concerned at the number of WRC [determinations](#) which cite the PDA in circumstances which were not foreseen by the Legislature when this Act was passed. We have seen evidence to suggest that solicitors are encouraging plaintiffs to use the PDA purely in the pursuit of larger settlements.
3. Outlawing of Upward Only Rent Reviews. We believe that the successful introduction of Rent Pressure Zones has removed the notional constitutional impediment to the ending of UORRs.
4. Review of the laws governing planning permission and objections to same. We believe the recently reported case of the Apple data centre in Athenry demonstrate how outmoded and slow our planning system is, relative to our EU neighbours.
5. We believe there is a need to establish the principle of 'Equality of Arms' for employers in defending employment cases by employees in the Circuit and High Courts. A typical case is that of Mariusz Bonczak V Cosgrave Transport Limerick Ltd and the Labour Court

¹ <https://isme.ie/assets/The-Case-for-a-Perjury-Act.pdf>

(awaiting judgment). The employer was denied an undertaking for costs from the plaintiff, on the basis the Court felt it would deny access to justice to the former. In practice, this means the respondent will bear their own costs if they win, and both sides' costs if they lose, despite the fact that the respondent is defending a decision of the Labour Court, an agency of state. This is a patently unfair situation, which encourages the taking of nuisance appeals by plaintiffs to the Courts, in order to stimulate the offer of a settlement by the respondent.

6. The introduction of formal rules for transfer of undertakings in Ireland, similar to the UK TUPE Regulations. As this is currently unregulated in Ireland, the matter relies on decision by a court, sometimes years after the change in employment circumstances have taken place. The implications of this can be particularly onerous for small service enterprises, which may be unable to absorb the liabilities of a transfer of undertakings into their company, which might follow a long time after the winning of a contract. The uncertainty around this issue is also grossly unfair to affected employees.
7. Small businesses require the introduction of an 'examinership lite,' as they find the current laws too onerous for them.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', enclosed in a thin black rectangular border.

Neil McDonnell
Chief Executive
ISME, the *independent* business organisation