

Relate

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The journal of developments in social services, policy and legislation in Ireland

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Finance Bill 2010

The Finance Bill 2010 provides for the implementation of various decisions announced in Budget 2010 and for a number of other measures. The main measures announced in the Budget are described in the January 2010 issue of Relate. The Finance Bill provides more detail in relation to some of these. Here we look at such further detail and at a number of the other measures covered by the Bill. The Bill has not yet been passed so further changes may be introduced. The text of the Bill and explanatory material are available at www.finance.gov.ie.

Tax relief for health expenses

The main rules in relation to tax relief for health expenses are not being changed but the Bill does provide for some clarification and makes some changes to the procedures required.

Approval of hospitals and nursing homes

At present, institutions such as nursing homes and foreign hospitals must be approved by the Revenue Commissioners before tax relief can be granted for expenses incurred in them. Prior approval of the institutions will no longer be required. Instead, the relief will be granted if the expenses you incur are on the advice of a medical practitioner. Nursing home fees will qualify for relief if the nursing home provides 24 hour a day qualified nursing care.

Nursing home costs

Nursing home costs attract tax relief as part of medical expenses tax relief. It was announced in Budget 2008 that these costs would get relief at the standard rate once the Nursing Homes Support Scheme came into operation. In the tax year 2009, nursing home costs attracted tax relief at the marginal rate while all other health expenses got relief at the standard rate.

The Nursing Homes Support Scheme came into effect in late 2009. However, tax relief at the marginal rate is to continue for nursing home costs. Other health expenses will attract tax relief at the standard rate.

The Bill clarifies that, in the case of a person availing of the Nursing Homes Support scheme (the Fair Deal scheme), the only nursing home costs that will attract tax relief are those incurred by the taxpayer and his/her spouse. The amount contributed by the State will not qualify for tax relief.

Excluded treatment

The Bill provides that, in general, cosmetic surgery does not qualify for tax relief unless it is necessary to ameliorate a physical deformity arising from, or directly related to, a congenital abnormality, a personal injury or a disfiguring disease.

In future, the Minister for Finance will have the power to decide that certain treatments which are considered to be contrary to public policy will not be eligible for tax relief.

Tax reliefs

A number of tax reliefs are being abolished. These include:

- Domestic service charges: tax relief on service charges will end in 2011 when relief will be available for payments made in 2010.
- Tax relief for premiums for long-term care policies: no such policies were ever offered so there are no beneficiaries of this relief.
- The relief available to passive investors under the significant buildings and gardens scheme is being abolished where work has not started; there are transitional arrangements for such investors in the 2010 and 2011 tax years where work has already started or there is a contract for the work.
- Capital allowances for expenditure on the construction, conversion or refurbishment of buildings that are used for childcare purposes will end in September 2010 with some exceptions for developments in the pipeline.

Health insurance

This health insurance levy is a levy on all holders of health insurance who then get age related tax relief. It was introduced in 2009 under the Health Insurance (Miscellaneous Provisions) Act 2009 in order to deal with the consequences of the court ruling that the risk equalisation measures which the Government planned to introduce could not be introduced.

The levy was to be in place for three years, 2009 – 2011. The levy is being increased from €53 to €55 for people aged 17 and under and from €160 to €185 for people aged 18 and over.

Age-related health insurance tax relief

The age-related tax relief at source for people aged over 50 is being increased. This is being paid for by the health insurance levy. These extra credits are applied at source in the same way as the general tax credit for health insurance is applied and no action is required by the insurance holder.

It is the Government's intention to introduce a new risk equalisation scheme to replace the arrangements for the levy and age-related relief.

Other income tax changes

Domicile levy

In the Budget, it was announced that certain Irish people who are not tax resident in Ireland will be liable to pay an annual domicile levy of €200,000 starting in 2010. This levy will apply to you if you meet all of these conditions:

- You are an Irish citizen who is domiciled in Ireland
- You have Irish located capital of more than €5 million
- You have worldwide income of more than €1 million and an Irish income tax liability of less than €200,000.

It does not matter where you live or where you are tax resident.

Charitable donations

Tax relief will continue to be available for donations to eligible charities which meet certain conditions and charities will continue to be exempt from various taxes. Donations made to charities which are established in other EEA and EFTA states will now also attract tax relief and those charities will be able to avail of the same tax exemptions. (These are the EU member states, Iceland, Liechtenstein, Norway and Switzerland.) This is required as a result of EU case law.

Rent a room scheme

This scheme is being amended to deny the tax relief in certain cases. The relief will not be available where payments are made by companies to an office holder or an employee for the purposes of the use of a room in the office holder's or employee's principal private residence on an occasional basis by clients of the company.

Other taxes

DIRT

The Bill provides that financial institutions must give customers information about the gross interest payable and the net interest after deduction of DIRT. It also provides that PRSA accounts are not subject to DIRT.

Savings certificates

The tax exemption for Post Office Savings Certificates is being extended to similar products from other EU countries.

Life insurance levy

This levy of 1% was introduced in 2009. It is being removed from pension contributions.

VAT on services provided by public bodies

The Bill provides for the charging of VAT by certain public bodies which have not been levying VAT because of a decision of the European Court of Justice (in Case C-554/07, 16 July 2009). The main bodies affected are local authorities but a range of other public bodies are also affected. From 1 July 2010, they will have to apply VAT to services which are subject to VAT when provided by private suppliers.

Services such as water, education, health and passenger transport services are exempt from VAT so public bodies will not have to apply VAT to them.

They will have to apply VAT to activities such as waste collection, landfill and recycling services; off-street parking; toll roads; the operation of leisure facilities; rent from certain lettings of commercial property; and the supply of staff and data.

The EU court ruling does not require that VAT be applied to services which are carried out by public bodies in their regulatory role. So, for example, VAT will not be applied to parking fines, fees for passports, driving licences, development levies, casual trading licenses and certificates of compliance.

Capital Gains Tax

The National Asset Management Agency Act 2009 provides for a windfall capital gains tax on profits from the rezoning of land in certain cases. This is at the rate of 80%. The Finance Bill amends this to ensure that material contraventions of development plans involving a rezoning are covered by the tax. It also provides that the sale of once-off sites under an acre and valued at less than €250,000 are not subject to the windfall tax.

Access to information, data protection and data retention

Technological advances have resulted in more and more information being readily available to various authorities about people's lives and activities. Various legislative safeguards have been put in place to protect privacy and to ensure that the information which is available is not misused. The legislation on the retention of information for the purposes of law enforcement is about to be changed. Here we look briefly at freedom of information and data protection legislation as well as at the proposed changes in data retention legislation and safeguards against the misuse of such data.

Freedom of Information

The Freedom of Information (FOI) legislation now applies to about 400 bodies. These include all Government departments, local authorities, the HSE, voluntary hospitals, most organisations providing services for people with intellectual or physical disabilities, third-level educational institutions, the broadcasting sector and nearly all the non-commercial State organisations – the full list is available on the Information Commissioner's website. www.oic.ie

The legislation does not apply to the Gardai or to organisations such as the National Treasury Management Agency, the National Asset Management Agency, the Central Bank and the Financial Services Authority.

The legislation provides that:

- You have the right to access records held by the public bodies which are covered by the legislation (with some exceptions);
- You have the right to access your own personal records, that is records which contain personal information about you; and
- You have the right to have these personal records corrected if necessary.
- You have the right to obtain reasons for decisions affecting you.

It also provides that public bodies must publish information about their activities - this is known as the Section 15 Manual. They must also publish the rules, procedures, guidelines and practices used by them when making decisions and information on how schemes are administered – this is known as the Section 16 Manual.

These obligations on public bodies are not changed. In practice, the vast majority of these manuals are now made available on the internet only.

Exercising your right of access

The general principle is that you have a right of access to any record held by a public body. Public bodies have a duty to give reasonable assistance to you if you wish to exercise this right of access. If you have a disability, the public body must facilitate you in exercising your rights.

In order to get access, you must apply in writing to the public body concerned. You must specify that you are making the request under the FOI legislation and you must give enough details of the information required to enable the public body to identify exactly what records you want. You must specify the manner of the access required, for example, on paper or electronic record. The public bodies must deal with your request within specific time limits.

If you are refused access, you have the right to an internal appeal against the decision. If you are still refused, you may appeal to the Information Commissioner.

Limits on the right of access

There are a number of administrative reasons why access may be refused, for example, the record cannot be found after reasonable steps have been taken or the record is going to be publicly available within the next 12 weeks.

The right of access is circumscribed by the right to privacy and the protection of the public interest in certain cases. For example:

Documents relating to Government meetings

In general, access to these documents must be refused.

Deliberations of public bodies

Access to records relating to the discussions and decision-making procedures of a public body must be refused in certain cases and may be refused in others.

Confidential and other sensitive information

Access may be refused to records which contain information which has been given to a public body in confidence. Personal information may not be accessed by third parties.

Access may also be refused to commercially sensitive information. Information which may have an adverse effect on the financial interests of the State or on business generally may also be refused.

Law enforcement

Access may be refused where the disclosure of the information concerned could prejudice or impair law enforcement or if disclosure would endanger the life or safety of any person.

Defence and security

Access to records must be refused where disclosure would adversely affect defence, security or international relations.

Amendment of personal information

Personal information means information which would normally be known only to you, your family and friends or information held by a public body about you on the understanding that it would be treated as confidential. It includes, among other things, information about educational or medical history, information about finances, employment, religion, age, sexual orientation, marital status, identification numbers, entitlements to social welfare, tax records, property and views and opinions.

If such personal information is incomplete, incorrect or misleading you may ask for it to be amended or deleted as appropriate. The process is the same as a request for access to the record. If the application is granted then the information is dealt with as required and the public body concerned must try to ensure that other bodies which had access to the record are informed of the change. If the application is refused, you must be told of the right to review and appeal. The record concerned must have the application attached to it so that, even if you do not succeed in having it corrected, then your disagreement with it is on the record.

The Information Commissioner

The main role of the Information Commissioner is to provide the appeal procedure if you are not satisfied that your rights under FOI have been granted.

The Commissioner also has a general role of overseeing the legislation and may carry out investigations into the practices and procedures adopted by public bodies for the purposes of complying with the legislation.

Fees

Fees must be charged in certain cases. Fees are not charged for access to personal information.

www.oic.gov.ie

Data protection

The data protection legislation aims to protect the privacy of people about whom personal information is held whether on computer or in manual or paper files. Under the legislation, you have the right to know if someone holds personal information about you and, subject to some exceptions, you have the right to access that information and have any inaccuracies corrected. People who hold personal information (they are called data controllers) have specific obligations in relation to obtaining and processing that information. The legislation is enforced by the Data Protection Commissioner who, among other things, keeps a register of data controllers and investigates complaints about failure to comply with the legislation. Certain data controllers, including those who hold sensitive personal information, are obliged to register with the Data Protection Commissioner.

Personal data

The legislation specifies conditions for processing personal data with more stringent conditions for sensitive personal data. Personal data means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.

Sensitive personal data means information about you such as your racial or ethnic origin, political or religious opinions or beliefs, whether or not you are a member of a trade union, your physical or mental health, your sexual life and any involvement in the criminal process. Data controllers who hold sensitive personal data are obliged to register with the Data Protection Commissioner who will refuse to register them unless satisfied that appropriate safeguards are in place to protect the privacy of the individuals concerned.

The legislation sets out the circumstances in which personal data may be processed. Broadly, this requires that the data should have been obtained and processed fairly, it should be accurate and complete and kept up to date, it should be obtained for one or more specified explicit and legitimate purposes, it should not be processed for any other purposes, it should be kept for no longer than those purposes require and there should be appropriate security measures to ensure that unauthorised access does not occur.

It also requires that you (you are known as the data subject) have given consent to the processing or the processing is necessary for one of a number of reasons including:

- The performance of a contract to which you are a party
- Taking steps at your request before you enter a contract
- Complying with the data controller's legal obligations
- Preventing injury to your health or loss of your property
- The administration of justice
- The performance of government functions or functions in the public interest
- Pursuing the data controller's legitimate interests.

The conditions for the processing of sensitive personal data are more stringent usually relating to the consent of the person about whom the data relates.

You are entitled to ask a data processor not to process personal data for the purposes of direct marketing. You must be told of your right to object.

You have the right to have inaccurate information corrected, deleted and/or blocked. Blocking means that it is marked in such a way that it is not possible to process it for purposes in relation to which it is marked. Where such information has been blocked, anyone to whom this information was disclosed in the previous 12 months must be notified unless this proves impossible or involves disproportionate effort.

Resolution of disputes

The Data Protection Commissioner is in charge of implementing the legislation and you may complain about any breach. In practice, complaints are often resolved by the intervention of the Commissioner without the need for any formal rulings.

Transfer of personal data between countries

The legislation provides that personal data may not be transferred to a country outside the European Economic Area (the EU countries, Norway, Iceland and Liechtenstein) unless an adequate level of protection is considered to exist. The Data Protection Commissioner may prohibit the transfer of data in such circumstances. The European Commission may make a finding that an adequate level of protection exists in a particular country and such a decision is binding on the Data Protection Commissioner. www.dataprotection.ie

Review of data protection

The Minister for Justice, Equality and Law Reform established a Data Protection Review Group to make recommendations on whether data protection legislation needs to be amended to provide for mandatory notification of data breaches with penalties. This group published a consultation paper in October 2009. www.justice.ie

Retention of telecommunications data

Telecommunications "traffic data" is the information which the telephone companies and the internet service providers have about your use of their services. This includes:

- Information about telephone usage: what numbers were called, when the calls were made, how long they lasted and the location of the mobile phone user but not the content of the phone calls
- Information about emails: the email addresses used and the date, time and size of the message sent but not the content
- Information about internet use.

Since this information is kept largely for the purposes of calculating your bill and giving you information about it, general data protection law would require that it be deleted once the bill is paid or any queries in relation to the bill have been sorted out. All telecommunications companies are required to register with the office of the Data Protection Commissioner.

General data retention

There are EU rules about the retention of telecommunications traffic data. These deal in detail with matters such as:

- Retention of detailed telephone records – broadly, they may only be retained for the time required to process bills. So, in general they may be retained only for six months. They may also be retained for law enforcement purposes under strict conditions.
- Caller ID – you have the right to hide your number generally or in particular cases, you have the right to reject incoming calls when the caller's number is not shown
- Public telephone directories – you have the right to be excluded from such directories
- Direct marketing – you may sign up to a central opt out register to indicate that you do not wish to receive unsolicited direct marketing telephone calls; this register is maintained by the Commission for Communications Regulation: www.comreg.ie

Retention and disclosure for law enforcement purposes

The data protection legislation allows the companies to disclose traffic data to law enforcement agencies in certain circumstances. The Gardaí and the Army have the power to access such data when investigating crime or in the interests of the security of the State.

The Criminal Justice (Terrorist Offences) Act 2005 deals with the retention and disclosure of fixed line and mobile phone data. It does not deal with email or internet data. It gives the power to the Garda Commissioner to ask a service provider to retain data for up to three years for the purposes of the prevention, detection, investigation or prosecution of crime or safeguarding the security of the State. At the end of the three-year period, the data must be destroyed.

The Minister for Justice, Equality and Law Reform considers that it would not be in the public interest to disclose which service providers have been asked to retain data but it seems likely that all of them have. It is the service providers who retain the data, not the law enforcement authorities.

The service provider is only entitled to access this retained data:

- At the request and with the consent of the person to whom the data relate
- In order to comply with a disclosure request from the Gardaí or the Army
- In accordance with a court order, or
- As authorised by the Data Protection Commissioner

The Act provides that the Gardaí or the Army may request disclosure of the data. A request for such disclosure may be made, in writing, by a garda not below the rank of chief superintendent. There is provision for an oral request in emergencies but the request must be put in writing within a short time. In practice, a specified chief superintendent makes the request for the information. There is a similar arrangement for information relating to safeguarding the security of the State. A request for such information must be made through an officer not below the rank of colonel.

Safeguards for individuals

If you consider that your data have been accessed following a disclosure request you may ask the Complaints Referee to investigate. The referee is a judge or lawyer appointed for this purpose. The current referee is a Circuit Court judge and may be contacted through the Courts Service. If the referee concludes that the data was illegally disclosed, they tell you and make a report to the Taoiseach. The referee may also order the destruction of the data and make a recommendation on compensation to you. If the data were disclosed, but not illegally, you are informed. There is also a designated High Court judge who has a general duty to keep the operation of these provisions under review.

The complaints referee and the designated High Court judge have similar duties under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 (this mainly deals with telephone tapping).

Communications (Retention of Data) Bill 2009

The Communications (Retention of Data) Bill 2009 is currently being discussed by the Oireachtas. The main aim of the Bill is to bring EU Directive 2006/24/EC into Irish law but not all of the changes proposed are required by the directive.

This directive requires that phone operators and internet service providers retain information about telephone calls and internet use and that they make it available on request for the detection, investigation and prosecution of serious crime.

The main changes that this Bill will introduce into Irish law are:

- Data may be retained for two years instead of three.
- The law will apply to the retention and disclosure of internet data; the retention period for internet data will be a year.
- At present, the data can only be requested by the law enforcement authorities for the prevention, detection, investigation or prosecution of offences and the safeguarding of the security of the State.

The new law specifies that this is for "serious" offences; broadly, these are offences for which a sentence of five years imprisonment may be imposed and certain indictable offences where the maximum penalty is less than five years. It also allows retention of data for the saving of human life.

- The law enforcement authorities who may request disclosure of the data will include the Revenue Commissioners. A principal officer may request the disclosure of the data.

The existing safeguards for individuals are retained.

Secret surveillance

The Criminal Justice (Surveillance) Act 2009 provides for the use of information discovered by secret surveillance as evidence in criminal trials. It sets out the conditions under which such surveillance may take place.

The Act provides that the Gardaí, the Army and the Revenue Commissioners may carry out surveillance. In general, they must have prior authorisation from the District Court.

The Act provides that complaints from people who are aggrieved by the operation of surveillance are to be dealt with by the Complaints Referee who also deals with complaints in relation to retention and disclosure of telecommunications data. The referee has the power to recommend compensation if the complaint is upheld. The designated judge oversees the operation of the Act.

Legislation update

FÁS

The Labour Services (Amendment) Act 2009 provides for a number of changes to the way in which FÁS is governed. It came into effect in January 2010. The main changes involve how the board of the organisation is appointed. There are now 11 members on the board instead of 17. The board is appointed by the Minister for Enterprise, Trade and Employment in consultation with the Minister for Education and Science and the Minister for Social and Family Affairs. The union and employer organisations no longer have an automatic right to nominate members to the board. The legislation also includes provisions for the protection of members of staff who report serious wrongdoing in the organisation (whistleblowers).

The legislation does not change the role of FÁS. It is the national training and employment authority. It provides training and employment programmes; a recruitment service to jobseekers and employers; an advisory service for industry; and it supports community-based enterprises. It operates programmes such as the Community Employment and Job Initiative Programmes. It has a regional network of 66 offices and 20 training centres. www.fas.ie

Student Support Bill 2008

The Student Support Bill 2008 which aims to put the various student grant schemes on a unified statutory basis (see Relate, March 2008) completed second stage in the Dáil in April 2008. It has not progressed beyond that stage. Among other things, the Bill provides for the transfer of responsibility for student grants to the Vocational Education Committees. The Minister for Education and Science has said that resources are not available to put the new administrative arrangements in place at present. It seems likely that the Bill will be amended to simply provide for a statutory basis for all student grants while retaining the existing administrative arrangements.

Criminal legal aid

The Criminal Justice (Legal Aid) Act 1962 governs the operation of the criminal legal aid scheme. Among other things, it provides that legal aid for cases before the District Court is limited to the services of a solicitor except in cases of murder. All criminal cases start in the District Court and the more serious cases are then dealt with by the Circuit Criminal Court or the Central Criminal Court.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Dublin 2 w www.citizensinformationboard.ie

In October 2009, the Supreme Court ruled that a person charged in the District Court had a constitutional right to apply for legal aid for representation by a barrister in cases where the court considers that there is a degree of gravity and complexity as well as any other exceptional circumstances. As a result of this case, the Minister for Justice, Equality and Law Reform introduced an administrative arrangement to allow this to happen.

It is intended to introduce a new Criminal Legal Aid Bill in the near future. This will put the administrative arrangement on a statutory basis. It will also introduce other changes to the criminal legal aid system.

Small Claims Court

From 11 January 2010, the Small Claims Court may be used for business claims of up to €2,000. Previously, business claims were excluded from the remit of the Small Claims Court. There is an online system for individual claims but this is not yet available for business claims. Manual claim forms may be handed in (by individuals and businesses) to any District Court office. www.courts.ie

Broadcasting Act 2009

The Broadcasting Act 2009 has been brought into effect. It provides for the establishment of the Broadcasting Authority of Ireland (BAI) which was established on 1 October 2009. The BAI has taken over the functions previously undertaken by the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission.

Broadcasting complaints

If you have a complaint about a radio or TV programme, you initially complain to the service provider. If you are not happy with its response you may complain to the BAI if it concerns an Irish broadcasting service. The Broadcasting Act 2009 provides for the establishment of a code of practice by broadcasters for handling complaints.

Alternatively, you may complain directly to the BAI.

You may make a complaint in relation to:

- Objectivity and impartiality in news
- Fairness, objectivity and impartiality in current affairs
- Anything which may reasonably be regarded as causing harm or offence or anything being likely to promote, or incite to, crime, or as tending to undermine the authority of the State
- The privacy of an individual
- Harmful or offensive material, in particular, programme material in respect of the portrayal of violence and sexual conduct should be presented with due sensitivity to the convictions or feelings of the audience and with due regard to the impact of such programming on the physical, mental or moral development of children
- Non-compliance with the BAI codes. The BAI has issued a number of codes:
 - Code of Programme Standards
 - General Advertising Code
 - Children's Advertising Code.

You must make your complaint within 30 days of the broadcast. In general, the decisions on complaints are published.

Broadcasting Authority of Ireland

2-5 Warrington Place, Dublin 2, Ireland
Tel: (01) 644 1200
www.bai.ie

Citizens Information

LOG ON
www.citizensinformation.ie

LO-CALL
1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN
For your local centre see Golden Pages listing