

relate

information for all

Vol. 31 No. 11
September 2004
ISSN 07904290

Contents

Page No.

- 1 **Irish Language**
- 3 **Private Residential Tenancies**
- 3 **Equality Act**
- 3 **Consumers of Financial Services**
- 4 **Civil Registration Act**
- 5 **Maternity Protection and Adoptive Leave**
- 5 **Children Act**
- 5 **Commissions of Investigation**
- 6 **Civil Liability and Courts Act**
- 6 **Proposed Legislation**
Dormant Accounts,
National Economic and
Social Development
Office, Water Services,
Garda Síochána,
Criminal Justice, Safety,
Health and Welfare at
Work, Reform of Land
and Conveyancing law

Legislation

This issue deals with recently passed and/or implemented legislation and includes short summaries of proposed new legislation. A Bill is proposed legislation and it is called an Act when it is passed. All the legislation is available at www.oireachtas.ie.

Irish Language

Most of the Official Languages Act 2003 is now in effect. Its main provisions are described in the July 2003 issue of Relate. The Office of the Official Languages Commissioner has been established.

The aim of the Act is to promote the use of Irish for official purposes in Ireland and to provide for the use of both official languages (Irish and English) in parliamentary proceedings, in the Acts of the Oireachtas, in the courts and the administration of justice, in providing services to the public and in carrying out the work of public bodies. The following is a brief summary of the main provisions of the Act:

The Dáil and Seanad (Oireachtas): Members have the right to use either of the official languages in any debates or proceedings. Oireachtas reports must be published in both languages except that direct speech may be reported in the language in which it is spoken. The requirement that the text of any Act must be published in each of the official languages at the same time is not yet in effect.

Court Proceedings: You have a statutory as well as a constitutional right to use either language in court proceedings. The Court is obliged to ensure that you are not disadvantaged by your choice of language. This section is not yet in effect but your constitutional right means that you are entitled to use Irish in court proceedings and to have the case dealt with in Irish.

Duties of Public Bodies: The Act sets out a range of obligations on public bodies. These include:



INSIDE: Private Security Services p4, Industrial Relations p5
Public Service Superannuation p6
Driver Testing and Standards Authority Bill p8

- ◆ The Minister for Community, Rural and Gaeltacht Affairs may require a public body to prepare a scheme which specifies the services which the public body proposes to provide exclusively through Irish, exclusively through English and in both languages and the measures which it intends to take to ensure that any services which are not provided through Irish will be so provided. The Minister has published draft guidelines on such schemes. It is expected that, in September 2004, 25 public bodies will be asked to draw up schemes and others will be asked to do so at a later stage. The draft guidelines are available at www.pobail.ie.
- ◆ The Minister may direct a public body to draw up a plan for the delivery of services through Irish
- ◆ The Minister may make regulations requiring that public bodies use stationery, signs and advertising in Irish
- ◆ Public bodies are obliged to reply to written communications in the language chosen by the customer (this is not yet in effect but is expected to be in early 2005)
- ◆ Public bodies are obliged to publish certain documents in Irish and English simultaneously. These include annual reports and documents setting out public policy proposals.

The Official Languages Commissioner

The Office of the Official Languages Commissioner has been established. The Commissioner's main functions are;

- ◆ to monitor and ensure compliance by public bodies with the provisions of this legislation
- ◆ to carry out investigations into any failure by a public body to comply with this legislation
- ◆ to provide advice or other assistance to the public about their rights as contained in the Act and to public bodies about their obligations
- ◆ to carry out investigations to find out if any other legislative provisions on the status or use of an official language are being implemented.

You may complain to the Commissioner if you consider that your language rights are being infringed. The Commissioner's powers of investigation are broadly similar to those of the Ombudsman and he may report to the Houses of the Oireachtas in the same way as the Ombudsman.

Official Languages Commissioner, An Coimisinéir Teanga, An Spidéal, Co. na Gaillimhe

Tel: 091 504006
LoCall: 1890 504 006
www.coimisineir.ie

Compensation: The Minister may provide for a scheme of compensation for people whose language rights are infringed by a public body. No such scheme has been put in place yet.

Placenames: The Act has a number of provisions on placenames. The Minister has the power to make various orders (usually after consulting with the Placenames Commission – An Coimisiún Logainmneacha). A number of orders have been made confirming the official Irish version of placenames in Counties Kilkenny, Louth, Limerick, Monaghan, Waterford (except the Gaeltacht), and Offaly and the official names of administrative Counties and Provinces. These Orders are based on research carried out and published by the Commission over the years since its establishment in 1946. It is expected that the orders for the remaining counties will be made over the next seven to ten years.

The Minister has published a draft placenames order for Gaeltacht areas – a consultation process is being conducted on this at present. An Order in relation to a placename in a Gaeltacht area means that the English version of that placename no longer has a legal standing. This means that the English version may not be used in official publications or on road or street signs or on Ordnance Survey maps. The draft order is at www.pobail.ie.

Irish Language Advisory Committee

The Minister for Community, Rural and Gaeltacht Affairs has appointed an Irish Language Advisory Committee (Coiste Comhairleach na Gaeilge) to advise him with regard to language planning and the strategic approach to be taken.

Irish in the EU

The Government is entering negotiations with the European Commission and the other member states to have Irish become an official and working language of the EU. At present, Irish is not an official language of the EU. EU treaties and some other documents are translated into Irish. You do have the right (under Article 21 of the treaties) to have a reply in Irish if you write to the EU institutions. The official and working languages are set out in Regulation 1/1958 as amended. Irish is not included in that regulation at present.

Further information is available at www.pobail.ie.

Private Residential Tenancies

The Residential Tenancies Act 2004 has been passed and it is expected that it will be implemented by the end of the year. Initially, the registration system will be put in place. The Bill was described in the October 2003 issue of Relate. The Act sets out the legal obligations of landlords and tenants, deals with rent and security of tenure and provides a dispute resolution mechanism. It puts the Private Residential Tenancies Board on a statutory basis. This Board will be responsible for the registration of private landlords and it is expected to put this system in place in the near future.

We will outline the rights and duties of landlords and tenants when the provisions are put into effect. Further information is available at www.environ.ie.

Equality Act 2004

The Equality Act 2004 has been passed and is in effect. It implements the EU Equality Directives and introduces other changes to the equality laws. The Bill was described in the April 2004 issue of Relate. A number of amendments were introduced as the Bill went through the Oireachtas. One of these concerns the employment of people with disabilities.

One of the EU Directives require that discrimination in employment on the grounds of disability be prohibited. It requires that “reasonable accommodation” be made for people with disabilities. This means that employers must take appropriate measures to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. The Directive states that the “burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the member state concerned”. The Equality Act 2004 amends the Employment Equality Act 1998 in order to take into account the requirements of the EU Directive. The Equality Act 2004 provides that, when deciding if the measures in

question would impose a disproportionate burden, account is to be taken of only the following factors;

- ◆ the financial and other costs involved,
- ◆ the scale and financial resources of the employer’s business,
- ◆ the possibility of obtaining public funding or other assistance and

The Act also provides that cases may be taken to the Equality Tribunal by parents or guardians on behalf of people with intellectual or psychological disabilities.

Cases involving alleged dismissal on any of the discriminatory grounds will be held before the Equality Tribunal rather than the Labour Court.

Further information on equality legislation is available at www.equality.ie.

Consumers of Financial Services

The Central Bank and Financial Services Authority of Ireland Act 2004 has been passed. The consumer protection aspects of the Bill were described in the April 2004 issue of Relate.

The Minister for Finance has invited expressions of interest from people who may be interested in being appointed to the following bodies:

- ◆ Credit Union Advisory Committee
- ◆ Financial Services Ombudsman Council
- ◆ Financial Services Consultative Consumer Panel

- ◆ Financial Services Consultative Industry Panel

The appointments have not yet been made. Later this year, we will deal in more detail with consumer protection issues. Further information is available at www.ifsra.ie.

Civil Registration Act 2004

The Civil Registration Bill 2003 was described in the October 2003 issue of Relate. It has since become law (with a number of amendments, particularly in relation to the solemnisation of marriages) as the Civil Registration Act 2004. The Act provides for the re-organisation of the system of registration of births, marriages and deaths. It also provides for new rules for the solemnisation and registration of marriages and for a register of annulments and divorces. The new rules on marriages are not in effect but it is expected that they will be in the first quarter of 2005.

The process of modernising the Civil Registration Service is continuing. This involves, among other things, providing for on-line registration and production of electronic certificates.

Rules on the solemnisation of marriage

The new rules on the solemnisation and registration of marriages are mainly concerned with having one set of civil preliminaries for marriage ceremonies and removing the different rules for different religions.

The present rule whereby couples intending to marry must give three months notice to the registrar will continue (this may be given in writing if the couple are not living in the country) as will the arrangements for getting a court order for exemption from this requirement. Couples will also have to fulfil an extra requirement – they will have to go to the registrar's office five days before the ceremony and sign a declaration that there is no impediment to the intended marriage. The registrar will then give the couple a marriage registration form. This is an essential condition for all marriage ceremonies and it will not be legal to have a marriage solemnised without this form. The form must be signed after the marriage ceremony by the couple, two witnesses and the solemniser. One of the couple must return the signed form to the registrar within one month of the ceremony.

The Act allows for the marriage ceremony to take place at a venue which is agreed by the couple and

the person solemnising the marriage. (You may have to pay extra fees and expenses if you want the ceremony to be held at a venue other than the registrar's office.) At present, civil marriages may be solemnised only at the office of the registrar of marriages. The rules about the location of religious marriages are decided by the religious authorities involved. The Act also provides that interpretation may be provided at the ceremony.

The Ard-Chláraitheoir will maintain a public register of solemnisers – this will replace the current register of churches and buildings. This register will include the names of the civil registrars and the religious who are nominated by the religious bodies to be solemnisers. It will be possible to have a religious solemniser temporarily registered – for example, if he/she is living abroad but wants to solemnise a specific marriage. There are provisions for appeals against the refusal to register a solemniser. This arrangement will mean that religious denominations whose ceremonies are not currently recognised by the civil law (for example, Muslims, Buddhists) will be able to have registered solemnisers of marriage, provided the essential requirements of the law on marriage are met.

The changes in the Act in relation to marriage are based on the discussion papers of the Interdepartmental Committee on the Reform of Marriage Law. These are available at www.groireland.ie/reform_of_marriage_law.htm.

Private Security Services Act 2004

The Private Security Services Act 2004 has been passed but is not yet in effect. It provides for

- ◆ the control and supervision of people and firms involved in providing private security services.
- ◆ the establishment of a licensing authority - the Private Security Authority
- ◆ the establishment of a complaints system and
- ◆ the establishment of an appeal system - the Private Security Appeal Board.

Maternity Protection and Adoptive Leave

The Maternity Protection (Amendment) Act 2004 has been passed. The Bill was described in the July 2003 issue of Relate. The Act provides for allowing women to end their maternity leave if they become ill, to postpone it if the child is in hospital and it provides for paid time off for both parents to attend ante-natal classes – these sections are not yet in effect.

The Adoptive Leave Bill 2004 has passed the Seanad and has yet to be discussed in the Dáil. It provides for changes to the adoptive leave arrangements in line with the changes in maternity leave. There were 623 adoptions in 2002; 357 of these were foreign adoptions, 167 were adoptions within families and 99 were non-family adoptions of Irish children. There were 215 recipients of adoptive leave payments.

The Bill provides for adoptive leave to be increased from 14 weeks to 16 weeks. It also provides for paid

time off – for both parents – to attend pre-adoption classes and interviews which they are obliged to attend as part of the adoption process. This right may be restricted in the case of members of the Defence Forces and Gardaí. Regulations will be made to set out the details of this entitlement.

People on adoptive leave will be able to postpone some of it if the child is in hospital.

Children Act 2001

The implementation of the Children Act 2001 was described in the May 2004 issue of Relate. The family conference provisions of the Act came into effect at the end of July 2004. These provisions mean that the Children Court may adjourn a case against a child who has been charged with an offence and order the Probation and Welfare Service to arrange a family conference. The child must accept responsibility for the criminal behaviour. The family conference then tries to draw up a plan for the child. If the child fails to comply with the plan, the criminal case may be resumed.

Commissions of Investigation Act 2004

The Commissions of Investigation Act 2004 provides for the establishment of commissions of investigation which would be able to investigate matters of significant public concern. The idea is that this new system would be used instead of tribunals of inquiry. It will still be possible to establish a tribunal as the legislation governing tribunals remains in place and this Act provides that, in certain specific circumstances, a tribunal may be set up after a commission has reported.

The Act provides that a commission may be set up by government order – this must be approved by the Dáil and Seanad. The terms of reference would be set by the Government or by an individual Minister. These terms must be accompanied by statements setting out the likely duration and cost of an investigation.

Commissions will be required to seek the voluntary co-operation of witnesses but will have powers to compel people to give evidence if necessary. They will also have powers to search premises and take documents. In general, evidence will be given in private. It is hoped that commissions will be less adversarial than tribunals. The legal representatives of other parties will be present only if the commission

is satisfied that their presence is necessary in the interests of the investigation and fair procedures. Witnesses may only be cross-examined if the commission agrees.

The Act provides for guidelines to be prepared by the relevant Minister in respect of witnesses' legal costs. A person who obstructs the commission or does not co-operate may be held liable for the additional costs resulting from this.

A commission will make a report on its findings. There are provisions for people named in the report to challenge the findings in relation to them.

Industrial Relations

The Industrial Relations (Miscellaneous Provisions) Act 2004 mainly deals with the resolution of industrial relations disputes where the employees want to be represented by a trade union and the employer refuses to engage in collective bargaining.

Civil Liability and Courts Act 2004

The Civil Liability and Courts Act 2004 provides for changes in the way personal injuries actions are processed through the courts and also provides for some other legal changes. The Act has been passed but it is not yet in effect. This Act, together with the Personal Injuries Assessment Board (PIAB) Act, is meant to lead to a reduction in the costs of personal injuries actions. The PIAB Act is now fully in effect. This Act includes provisions for speeding up cases and for penalising people who delay the process unnecessarily.

This Act provides for a reduction in the limitation period for personal injuries actions. At present, most personal injuries claims must be made within three years. This will be reduced to two years. The Act provides for penalties for fraudulent and exaggerated claims. It includes provisions requiring the plaintiff to provide more information on the claim at an earlier stage – the details of the claim must be made in full within the two year period for making a claim. If a plaintiff does not give notice of intention to claim within two months of the accident, he/she may be penalised in costs. Defendants are also required to give complete information and do so quickly. Plaintiffs must give their PPS No. on the statement of claim and must give information about any previous personal injuries awards and settlements. They must also verify claims for loss of earnings by showing tax returns.

The court may order the parties to engage in mediation in order to discuss and possibly settle the case. If either party does not co-operate, they may have to pay the subsequent costs of the case. The

parties must also set out the terms on which they are prepared to settle before the case goes to trial. Again, this process could affect the question of costs.

There will be pre-trial hearings – these will aim to decide what are the issues in dispute. The court will be able to appoint an independent expert to give an opinion on various issues – normally this is done by experts for each side.

The Courts Service will set up and maintain a register of personal injuries actions. This will show the names, addresses and occupations of the parties to personal injuries actions. The register will be available to people who show the Courts Service that they have an interest in accessing it.

The Act provides for the reporting of family law cases. At present, it is difficult to report these cases because of the in camera rule (this means that the public are not admitted). Family law cases will continue to be heard privately but it will be possible to report on them – without naming the parties.

Public Service Superannuation

The Public Service Superannuation (Miscellaneous Provisions) Act 2004 has been passed. Among other things, it removes the compulsory retirement age for some new public service employees who enter the public service on or after 1 April 2004. It also increases the age at which some of these new employees will qualify for a pension and it makes a number of other changes to public service pension arrangements.

Proposed Legislation

Dormant Accounts

The operation of the Dormant Accounts Fund was described in the February 2004 issue of Relate. The amount which the Dormant Accounts Fund Disbursements Board may spend has been increased from €30m to €60m. There is now over €220 million in the fund.

The Dormant Accounts (Amendment) Bill 2004 has been published and discussed in the Seanad. The aim of the Bill is to change the way the fund is being disbursed at present, to establish a Dormant Accounts Board and abolish the Dormant Accounts Fund Disbursements Board. The intention is to appoint the members of the disbursements board as members of the Dormant Accounts Board.

Under the Bill, the objectives of the fund will remain the same. The decisions on funding will be made by the Government after a public application process. The role of the new Board will be to prepare plans, review progress in achieving objectives and assess the additionality and impact of the spending.

Applications for funding will be assessed by or on behalf of the relevant department or public body. The Minister for Community, Rural and Gaeltacht Affairs will then make recommendations to the Government on what projects should be funded and the Government will decide. The funding will be channelled through the department dealing with the recipient group – so, for example, family groups could receive funding through the Department of Social and Family Affairs.

National Economic and Social Development Office

The National Economic and Social Development Office Bill 2002 has been discussed in the Dáil but is not yet passed. It proposes to put the National Economic and Social Development Office and its three constituent bodies, the National Economic and Social Council; the National Economic and Social Forum; and the National Centre for Partnership and Performance on a legislative basis. The Bill was described in the July 2003 issue of Relate.

Water Services Bill 2003

The Water Services Bill 2003 has been passed by the Seanad and has yet to be discussed by the Dáil. The aim of the Bill is to set out the functions, standards, obligations and practice concerning the planning, management and delivery of water supply and waste water collection and treatment services. It consolidates and updates existing legislation (some of which dates from 1847). Its main points are:

National Authority: It establishes the Minister for the Environment, Heritage and Local Government as the national authority for regulating the provision of water services. The Minister is obliged to facilitate the provision of safe and efficient water services and

associated infrastructure, to supervise and monitor the performance by water services authorities (generally local authorities) of their functions and is given responsibility for planning and supervision of investment in water services.

Owners of premises and waste water: The Bill puts an obligation on owners and occupiers to ensure that waste water from their premises does not cause nuisance or risk to human health or the environment. Similarly they are obliged to ensure that treatment systems (septic tanks) do not cause a nuisance or risk.

Conservation: The Bill provides for measures to ensure conservation of water supplies.

Consumer complaints: The Minister may make regulations for dealing with consumer complaints.

Interruption of water supplies: The Bill regulates the temporary interruption of supplies and the provision of alternative supplies.

Repair of connections: At present, problems arise when the connection between private premises and the water mains or sewers need repair. The owner of the premises is legally responsible for these repairs but frequently has difficulty in carrying them out when they occur outside the boundary of the premises. This situation has been criticised by the Ombudsman. The Bill allows for the water authorities to do the repairs or to take over responsibility for the connection if this is considered appropriate.

Group Water Schemes: The European Court of Justice has recently held that Ireland has failed to implement fully the EU drinking water directive. The quality of water in group water schemes has raised concerns. The Bill provides for a system of licensing for the larger group water schemes – those that serve more than 50 people. These licences will set treatment standards, standards of service and monitoring and supervision arrangements in order to ensure that the water meets the required quality. The Minister will have the power to set standards for small water schemes as well. There are provisions for the water services authority to temporarily take over a group water scheme if necessary

Water meters: The Bill provides for powers of access for installation, reading and maintenance of meters.

Garda Síochána Bill 2004

The Garda Síochána Bill 2004 has been discussed in the Seanad but has not been passed there yet. The

Bill updates and consolidates the law in relation to the functions and management of the Gardaí and provides for the establishment of a Garda Ombudsman Commission to replace the Garda Síochána Complaints Board.

The Bill sets out the functions of the Garda Síochána as the provision of both a national policing and security service. It also sets out the objectives of these functions, such as preventing crime, bringing criminals to justice, protecting life and property and protecting the security of the State and its institutions. It provides for the appointment of volunteer members to the Garda Síochána – effectively a Garda Reserve. The Government has not yet decided to establish such a force but wants to have the legal authority to do so if it should so decide. It provides for the establishment by the Garda Síochána and local authorities of joint policing committees. These committees will keep under review local levels and patterns of crime, disorder and anti-social behaviour, and will act as a forum for discussion and recommendations on local policing matters. The Bill provides that the Garda Síochána must have regard to human rights in performing its functions.

The Ombudsman Commission will have the power to investigate Garda conduct even if no complaint is made. The Commission will consist of three people – at least one woman and one man. They will be full time. None of its members can be a member or former member of the Garda Síochána. It will employ its own investigating officers and they will have similar powers to Gardaí for the investigation of criminal offences.

Criminal Justice Bill 2004

This Bill has been published but not yet discussed in either the Dáil or the Seanad. It provides for a range of anti-crime measures including

- ◆ general powers in relation to search warrants,

- ◆ increased detention periods for certain alleged offences
- ◆ powers of appeal
- ◆ fixed penalties for certain public order offences
- ◆ rules on the admissibility of evidence
- ◆ changes in the rules for getting a gun licence

Safety, Health and Welfare At Work Bill 2004

This Bill proposes to amend the existing legislation. Among other things, it proposes to give further functions to the National Authority for Occupational Safety and Health and to rename it the Health and Safety Authority.

Driver Testing and Standards Authority Bill 2004

This Bill provides for the establishment of a Driver Testing and Standards Authority to take over driver testing in Ireland.

Reform of land and conveyancing law

The Department of Justice and the Law Reform Commission are undertaking the reform of land and conveyancing law. Some of this law dates back to the 13th century and there are over 100 pieces of legislation from the period before 1922. The objective of the project is to

- ◆ Simplify the law and improve its presentation, in order to make it easily understood and accessible for lawyers and the public
- ◆ Update the law to accommodate changing social, demographic and economic needs
- ◆ Make the conveyancing of property easier and faster with a view to reducing costs and delays.

Relate Subscription Rates:

Annual Subscription

(12 issues, January to December)

€15.85 post free

Each additional subscription sent in the same envelope

€1.90 per year.

Published by:

Comhairle

7th Floor, Hume House

Ballsbridge, Dublin 4.

Tel: 01-6059000 Fax: 01-6059099

E-mail: comhairle@comhairle.ie

Website: www.comhairle.ie

Individual copies 75 cent



information for all