

Government's Legislative Programme for Autumn Session 2017

Published 19 October 2017

On 19 September 2017, the Government Chief Whip released a list of the Government's legislative priorities for the new Dáil term.

Priority Legislation

A total of 28 bills have been prioritised for publication in the Autumn Session, including:

The Regulated Health Professions (Amendment) Bill

This started life as a Health (Miscellaneous Provisions) Bill back in December 2015 with pre-legislative scrutiny conducted at that stage and again in December 2016. The revised title more accurately reflects the changes being introduced with the purpose of the bill being to amend the legislation relating to the Medical Council, the Dental Council, CORU, the Pharmaceutical Society and the NMBI as well as amending the Health Acts of 1953 and 2004.

One of the amendments is to provide for the availability of an appeal against "minor" sanctions being imposed against a regulated professional. Currently, an appeal to the High Court is not available if a registrant wishes to challenge the imposition of an advice, admonishment or censure. This point has been raised before the Courts on a number of occasions, most notably in the case of *Corbally v. the Medical Council*.

Other matters to be addressed by the bill include the transposition of Directive 2013/55/EU on the recognition of professional qualifications and the action to be taken by a regulator if a person has been prohibited / restricted from practising in another county.

Data Protection Bill

The General Data Protection Regulation (GDPR) will be directly effective from 25 May 2018 without any need for further legislation. However, Member States have discretion on certain derogations and other limited areas. The Department of Justice and Equality published the General Scheme of Data Protection Bill 2017 in May. Pre-legislative scrutiny was completed in July.

What are the headline issues?

- **Fines without convictions.** Organisations will be fined without having to first be convicted of a criminal offence, as is currently the case. The fines will be imposed by the Data Protection Commission rather than the Courts, although data controllers will be entitled to appeal fines to the Circuit Court or High Court (depending on the level of the fine). Many EU directives presume that regulators can impose administrative fines and other sanctions, but most Irish regulators do not have this power and more often than not it is only the courts who have the power to impose fines following a criminal conviction.
- **No fines for public bodies?** The General Scheme of the Bill which was published avails of the derogation allowed in the GDPR by stating that fines will only be imposed on public authorities and bodies acting as "undertakings". The explanatory note which accompanies the General Scheme says that this approach stems from concerns that fully exempting public bodies from administrative fines would result in a distortion of the market. It dodges the obvious question of why exempt public bodies at all, particularly given that the Data Protection Commissioner regularly identifies public bodies as among the worst offenders when it comes to data protection. The Data Protection Commissioner has already spoken of her 'serious concerns' in this regard at the pre-legislative stage, saying her office saw "no basis on which public bodies or authorities would be excluded, particularly given that arguably higher standards in the protecting of fundamental rights are demanded of those entities." It remains to be seen whether this derogation will be retained in the Bill when it is published.
- **More resources for the regulator.** The Data Protection Commissioner will become the Data Protection Commission and there will be three commissioners rather than one. The Budget saw an additional €4 million allocated to the Data Protection Commissioner for preparations for the GDPR.
- **13 as the digital age of consent.** Under the GDPR, Member States have discretion to provide for a digital age of consent anywhere between 13 and 16. Data processing will only be lawful to the extent that consent is given by that child's parent or guardian if the child is under the digital age of consent. The Government is of the view this age

should be 13.

Pre-Legislative Scrutiny

Aside from the priority bills, a further 30 bills are expected to undergo Pre-Legislative Scrutiny in the current session. From a regulatory perspective, the following are of interest:

Building Control Bill

The heads of the Building Control bill were approved on 30 May 2017 and the purpose of the new bill is stated as *"to place Construction Industry Register Ireland or CIRI on a statutory footing and thereby provide in law for the registration of builders, contractors and specialist sub-contractors"*. CIRI was established by the Construction Industry Federation (CIF) with the support of the Government and provides a list of construction professionals who are deemed to be "competent" for the purposes of signing certificates of compliance on completion of projects as required by Regulations introduced in 2014.

- The CIF is proposed under the General Scheme to be the registration body who will be tasked with establishing an admissions and Registration board (such a board already exists for the purposes of dealing with applications to be placed on the CIRI).
- The scheme requires builders to be registered before carrying out building works (though a number of works are excluded from the remit of the Act).
- It also provides for the introduction of specialist divisions to the Register but must have regard to 7 specified considerations before doing so.
- It also provides for minimum competencies, a Code of Conduct and a complaints investigation mechanism in respect of registrants which will be overseen by the Admissions and Registration Board.

The Board will be able to conduct investigations and appoint inspectors. Findings include improper conduct, poor professional performance and breach of registration requirements. Possible sanctions will range from advice / admonishment up to suspension and erasure from the register with the more serious sanctions requiring High Court confirmation, mirroring that of other professional regulatory bodies.

A separate appeals committee will be established to deal with appeals by members / applicants who are adversely affected by a decision of the Admissions and Registration board.

The date of pre-legislative scrutiny is yet to be determined.

Irish Aviation Authority (Amendment) Bill

Work is said to be underway with respect to Pre-Legislative Scrutiny of this bill which aims to amend existing legislation dating from 1997 *"to extend the existing powers of the IAA, with regard to its safety regulation function, to recoup costs through fees and charges for its aviation security regulation functions"*. It is also planned to recognise the IAA's role in compliance monitoring under Annex 17 of the Chicago Convention which deals with security of civil aviation.

It should be noted that this bill was assigned a similar status in the Spring / Summer 2017 Legislative programme so its progress in this session remains to be seen.

Other Legislation

73 other pieces of legislation are listed in the programme, each at varying stages of progress. It is unclear whether any of these will make any significant progress in the current session. The following are included in this section:

Greyhound Industry (Amendment) Bill

The heads of bill were approved in March 2017 and pre-legislative scrutiny has also taken place but this is not designated as a priority for the government in the current session. This will update the 1958 Act and is intended to "ensure that the principles of good governance and regulation are clearly laid down in primary legislation". Among the main amendments will be:

- a change in name from Bord nag Con to "Greyhound Racing Ireland"
- the introduction of a racing code and racing sanction, providing a basis for administrative sanctions for breaching the applicable rules, moving away from the criminal sanctions under the current regime.
- The implementation of recommendations from the Indecon Report to include amendments to the corporate governance arrangements in place for the current board to reflect the Code of Practice for the Governance of State Bodies, conflict of interest disclosure requirements, effective delegation of functions to the CEO, and placing existing ministerial powers to remove a Board member on a primary legislation footing.
- A statement of the functions of Greyhound Racing Ireland
- An extension of the Board's regulatory powers to control racing officials and powers to deal with doping of greyhounds with a view to introducing a comprehensive set of anti-doping rules.
- The appointment of Authorised Officers (for the first time in primary legislation) to investigate issues, including the use

of prohibited substances.

- The transfer of decisions on the application of sanctions to the Control and Appeal Committees (both of which have their powers and roles dealt with in the legislation). These are independent of the Board in the exercise of their functions and the provision that all participants in the sport subject themselves to the jurisdiction of these Committees.
- The extension of disqualifications and exclusion orders to be more effective.
- Industrial Relations (Amendment) Bill

Work is said to be underway on amending the 1990 Act which will give the representative associations of An Garda Síochána (the Garda Representative Association ("GRA") and the Association of Garda Sergeants and Inspectors ("AGSI") access to the workplace relations commission and the Labour Court.

The proposed legislation was mentioned to the Dáil by the then Taoiseach in November 2016 where he noted that he had instructed the Attorney General to move as quickly as possible to put the required legal frameworks in place. It was reported earlier this year that this legislation would not be in place until the end of 2017 at the earliest but as no heads of bill are approved at this stage and the fact that it does not appear in a priority list, it seems highly unlikely that there will be any significant progress by the end of this year.

Cyber Security Bill

This Bill will provide powers to the Minister for Communications to transpose the Network and Information Security Directive (NISD) into Irish law. The NISD is designed to create a focus on the protection of IT systems in European critical national infrastructure. Essentially it introduces new breach reporting obligations to whole new swathes of industry, including the energy, transport, banking and healthcare sectors. It will also require Member States to adopt a national cyber strategy which defines objectives, policy and regulatory measures to protect the State.

Health Information and Patient Safety Bill

The heads for this amendment bill were approved in November 2016 with Pre-Legislative scrutiny completed in December 2016.

The bill aims to "provide a legislative framework for the better governance of health information and initiatives including data matching and health information resources for use in the health service and support for clinical audit and patient safety notifications".

However, possibly of most significance will be its provision to extend the remit of the Health Information and Quality Authority to private health providers. This proposed extension was announced by the then Minister for Health in June 2015 to include private hospitals and certain cosmetic surgery procedures as well as an oversight role for research ethics committees for clinical trials.

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