Progressing Bills through the Oireachtas

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Of particular note in the listing of priority legislation for publication this Session is the Data Sharing and Governance Bill, the purpose of which will be to mandate greater data-sharing and data-linking in the public service. The Bill will provide a legal mechanism to facilitate lawful data-sharing and data-linking for all public bodies. Furthermore, it will define standards for data governance and security. The Bill is expected to undergo Pre-Legislative Scrutiny during this Session.

The Department of Housing, Planning, Community and Local Government has listed the Housing (Miscellaneous Provisions) Bill as a priority for publication this Session. The Bill will provide for the implementation of a range of measures relating to Rebuilding Ireland – the Action Plan for Housing. Included are provisions for a fast-track planning process for large housing development proposals and provisions for streamlined planning arrangements in relation to local authority own development for social housing and infrastructure projects. The Residential Tenancies Act will be amended and the role and powers of the Residential Tenancies Board strengthened.

The 71 proposed Bills being considered for introduction in the medium and long-term include the Landlord and Tenant Law Reform Bill which will update the law relating to landlord and tenant, the Táilte Êireann Bill to merge the Property Registration Authority, the Valuation Office and the Ordnance Survey Office and the Higher Education (Reform) Bill to modernise the legislative framework underpinning the Higher Education Authority and the governance structures of Irish universities.

The second Government Legislation Programme of the new Partnership Government was published on 27 September 2016. The Programme sets out the priorities that the new Partnership Government will seek to progress through the Oireachtas before the end of this year. This Session, there are 25 Government Bills to be published, 20 Government Bills to undergo Pre-Legislative Stage, 21 Bills currently before the Oireachtas and 71 proposed Bills being considered for introduction in the medium and long-term.

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New powers to protect charities

Part 4 of the Charities Act 2009 (the "Act") came into force on Monday, 5 September 2016 and sets out the various provisions for the protection of charitable organisations.

The introduction of Part 4 of the Act gives investigative and protective powers to the Charities Regulator who may appoint an 'inspector' to investigate the affairs of a charitable organisation and to impose sanctions if a charity breaches certain obligations, such as the requirement to keep proper accounts or to submit its annual report.

Power of Charities Regulator to require production of documents

The Charities Regulator may, by direction in writing, compel a charitable organisation or the charity trustees of a charitable organisation, to produce such books, documents or other records as may be so specified by the Charities Regulator. The Charities Regulator must, however, be of the opinion that the charity has/will undertake unlawful or fraudulent activities, or that examination of these documents is required to determine whether an inspector should be appointed to the charity.

When appointed, an inspector may also compel the production of such documents. This requirement to produce, applies to documents within the possession, under the control or within the procurement of a charity trustee or agent of a charitable organisation.

A charity trustee or agent of a charitable organisation shall also attend before an inspector and give all assistance in connection with the investigation which he/she is reasonably capable of giving when required to so do by an inspector.

Entry and search of premises

Where the charitable organisation fails to comply with the direction of the Charities Regulator to produce such books, documents or other records as may be so specified, an inspector, or the Charities Regulator as the case may be, may apply to the District Court for a warrant to:

i. enter the premises, if necessary by the use of reasonable force
ii. search the premises and inspect and take possession of all such books, documents or other records that are the subject of the investigation
iii. take all necessary measures to ensure that such books, documents, or other records are preserved and not interfered with

Application to the High Court

The Charities Regulator may also apply to the High Court for such Order as it considers appropriate in circumstances where there has been misconduct on the part of any charity trustee or member of staff in relation to the affairs of the charitable organisation, where property of the charitable organisation is being misapplied or where the provisions of the Act are not being complied with. The High Court has the power to make a number of orders including the following:

i. an order suspending or removing any charity trustee or member of staff
ii. an order prohibiting the removal, sale or application of any property of the charitable organisation
iii. an order vesting any of the property in the Charities Regulator
iv. an order appointing any person to act as charity trustee
v. orders restricting the payment of debts to, or the entering of agreements by, the charitable organisation

Conclusion

CEO of the Charities Regulator, John Farrelly, welcomed the new powers stating:

"The introduction of Part 4 of the Act is a very positive and welcome step for charity regulation in Ireland. The powers it confers will allow the Regulator to take steps to ensure that charitable organisations are protected and well managed. Where breaches of the Act are suspected the Regulator can now work proactively to prevent and counter mismanagement and protect charitable organisations. These powers will be applied in a proportionate and fair manner, recognising that the majority of charities require support rather than enforcement."

When one considers the recent high level media attention to issues involving charities, charities should assume that the CRA will use the powers afforded to it.

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New Medical Council guidelines – what can Medical Practitioners expect?


The new Guide sets out the principles of good professional practice, that all medical practitioners registered with the Medical Council will be expected to adhere to. There are four pillars under which every medical practitioner is expected to follow: professional identity, partnership, practice and performance.

These updated guidelines will assist all medical practitioners with a detailed guidance, and with greater clarity on many areas of practice, such as maintenance of medical records, consent, managing conflicts, concerns about colleagues, doctors in management and leadership roles, restraint, conscientious objection and nutrition and hydration. The Guide also highlights to all medical practitioners the expectations that modern Ireland as a society places on the medical profession as a whole.

The new guidelines also advise and assist medical practitioners in relation to the issues that the medical profession now faces as a result of advances in social media and technology. The main aspect of this guidance is that medical practitioners must adhere to the general rules regarding doctor patient confidentiality. It advises that medical practitioners should not contact a patient via social media. Medical practitioners should also check that information about themselves and their practice is kept up to date and is valid.

Advice on the use of telemedicine for the treatment of patients is also provided in the guide. Only medical practitioners registered with the Medical Council can provide this service in Ireland. A medical practitioner must first get the patient’s consent before engaging in a telemedicine communication, and they must also ensure that a patient’s privacy and confidentiality is protected.

Both aspects of social media and telemicine are new additions to the guidelines, as well as clearer and updated guidelines on every other aspect of the professional practice. The new guidelines will provide a greater understanding of the issues that affect everyday medical practice in Ireland, and will be welcomed by both medical practitioners and patients alike.

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Code of Practice for the Governance of State Bodies

Introduction

The Code of Practice for the Governance of State Bodies (the “Code”) came into effect on 1 September 2016. This is the first revision of the Code since 2009 and significantly enhances corporate governance for State Bodies.

Throughout the Code, emphasis is placed on effective leadership, strategy and accountability by the Chairperson, Board and management to the Minister/Parent Department and/or the Department of Public Expenditure and Reform (the “DPER”).

The Code is based on four key pillars:

- **Values** – good governance supports a culture of behaviour with integrity and ethical values
- **Purpose** – each body should be clear about its mandate with clearly defined roles and responsibilities
- **Performance** – defined priorities and outcomes to achieve efficient use of resources resulting in the delivery of effective public services
- **Developing Capacity** – appropriate balance of skills and knowledge within the organisation, to be updated as required

It is also accompanied by four ‘Associated Code Documents’:

- Business & Financial Reporting Requirements
- Audit & Risk Committee Guidance
- Remuneration & Superannuation
- Board Self-Assessment Evaluation Questionnaire


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Comply or Explain

The Code requires all State Bodies to confirm that they comply with the Code; in practice however, subject to written agreement by the Minister/Parent Department, the Code can be applied proportionately. Any such arrangements must be disclosed in the Annual Report and the agreement reached may ultimately require full compliance on a phased basis which must also be disclosed.

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Highlights of the Code include:

Role of the Board
The Code emphasises the Board’s role in setting the ethical tone at the top of the company, discharging its duties which mirror the fiduciary duties in the Companies Act 2014 (“2014 Act”). A letter of appointment and induction is required on appointment, which is for a term of 5 years. A new provision is there is now an expectation of a 100% attendance at Board meetings and while a second term of 5 years is possible for directors, their attendance record must be taken into account when considering their re-appointment. The Code requires directors to monitor implementation of the Strategy by way of an annual planning and budgeting cycle. The Code also requires an annual evaluation of actual performance of the State Body by reference to the Strategy and/or Budget.

Company secretary
The Code includes, for the first time, a focus on the Secretary to the Board, which it stresses as an important role in the effective functioning and operations of the Board. The Code requires that the Board ensures that the person appointed as Secretary has the skills necessary to discharge the duties of the role which are set out in the code but also allows the Board to delegate additional duties.

Role of the Chairperson
The Code also places new emphasis on the key role of the Chairperson who is ultimately responsible for the effectiveness of the Board, its leadership and as such is expected to demonstrate the highest standards of integrity and probity. The Chairperson is expected to set the tone of Board discussions. The Chairperson is also ultimately accountable to the Minister and must report to the Minister/Parent department in the form of ‘comprehensive’ reports which include a Statement on Internal Control. The Chairperson is also required to make themselves available to the Oireachtas Committee on appointment to discuss their approach to their role.

Board effectiveness
The Code includes a comprehensive section on Board effectiveness, including requiring Boards to undertake an annual evaluation of their effectiveness. Emphasis is placed on board competency and ensuring a broad skillset on the Board. An external evaluation must also be carried out at least every three years. The Chairperson is also required to address Diversity on State Boards, including gender.

Codes of Conduct, Ethics in Public Office, additional disclosure of interests by board members and protected disclosures
All State bodies are required to have Board approved, and published, Codes of Conduct for Board Members and for employees. Ethics in Public Office, conflicts of interests and their disclosure on appointment and annually thereafter and disclosure of interests are all comprehensively addressed. The Code specifically acknowledges the requirement to establish and maintain procedures for the making of protected disclosures.

Business and financial reporting
There have been specific enhancements on business and financial reporting requirements. The Code provides for the requirement to publish Board Fees, Board Meetings and Attendance and key management compensation including salaries, short-term benefits, post-employment benefits and termination benefits. Disclosure of the CEOs salary, benefits and any termination benefits must be separate to other disclosures.

Risk management, internal control, internal audit and audit and risk committees
The Code specifically requires that advising on key risks is a matter for the Board, supported by an Audit and Risk Committee. The role of the Audit and Risk Committee is stressed, advising the Board on matters such as risk, internal controls, governance and the planning of Internal and External Audit activities.

An independent Internal Audit Unit is required, or in its absence an external resource should be engaged with the right to review all areas of the State Body. An annual programme of audits must be put in place in consultation with the Audit and Risk Committee. Unlike other governance codes, the State Code does not prescribe a Remuneration Committee or Nominations Committee. This reflects the fact that remuneration and appointments are generally reserved to the Oireachtas and/or relevant Ministers.

Relations with the Oireachtas, Minister and Parent Department
The Code places particular emphasis on the relationship between the Parent Department and the Company through the Chair, CEO and management. It envisages on-going dialogue between government departments and State Bodies through a common understanding of the objectives.
**Procedures for Procurement**
The Board has an obligation to satisfy themselves that public procurement policies and procedures are in place and have been communicated to all staff. They must ensure they are familiar with current value thresholds for both EU and National procurement rules.

The Chairperson is required to confirm that a Corporate Procurement Plan is in place and its adherence to its procurement policy and procedures including any non-compliance, in the Chairperson’s comprehensive report to the Minister.

**Property acquisition and disposals of surplus property**
Prior approval of the relevant Minister and the Minister for Public Expenditure and Reform is required for any material disposal or acquisition including leases. Detailed procedures are outlined in the Code for the acquisition of land, buildings or other material assets.

**Capital investment appraisal**
The Board is required to ensure that the State Body complies with The Public Spending Code. This includes ensuring that effective systems and procedures are in place to ensure such compliance. The Board is also required to oversee that the State Body has appropriate models for investment appraisal in place which are appropriate to their relevant sector. The Chairperson must confirm in the Annual Report that the State Body is adhering to The Public Spending Code.

**Diversification and establishment of subsidiaries and acquisitions by State Bodies**
Any action which could change the nature, scope or scale of the State Bodies activities requires Ministerial consent including the consent of the Minister for Public Expenditure and Reform. The Code sets out detailed procedures for seeking approval including the detailed information to be provided when seeking consent which includes, inter alia, a full business case including cash flows, projections and risk analysis.

**Disposals**
The Board must have arrangements for any disposals of state assets or access to assets by third parties, which includes Joint Ventures and any such disposals must be transparent and at fair market-related prices. The pledging of assets as contingent assets in pension scheme funding proposals to address minimum funding standard reserve deficits must only be as a last resort where there is no other option.

**Tax Compliance**
The Code states that State Bodies should be “exemplary” in their tax compliance and should not enter into any tax avoidance schemes. The Code also firmly places responsibility on the board to ensure that any tax clearance requirements regarding payments of grants, subsidies or similar and for Public Sector Contracts are fully adhered to.

**Legal disputes with other State Bodies**
The Code requires State Bodies to make every effort to resolve disputes involving other State Bodies by way of mediation, arbitration etc. before taking costly legal action. In addition to annual reporting of any such legal disputes any expenditure over €25k must be reported with quantum by 30 June of each year to the DPER.

**Remuneration and Superannuation**
The Code has annexed to it separate guidance on Remuneration and Superannuation which is comprehensive. The main principle in the Code is that the Chairperson and Board of all State Bodies must implement Government Policy in relation to ‘total remuneration package’ and other provisions for superannuation and termination benefits of CEOs/Managing Board Members or other staff where applicable.

There must be advance consultation with the DPER prior to implementing any pay proposals or developments which could have implications on Government Pay policy. State Body finances, Charges for goods or Services and/or any other areas of the public sector. The State Body should adhere to public services standards, act with integrity, and not become involved in any practices which result in loss to the Exchequer.

**Fees to Board Members**
The Code provides that the State Body is responsible to ensure that fees paid to the Chairperson and Board Members are at the rates sanctioned and approved by the Minister for Public Expenditure and Reform and that they comply with the One Person One Salary rules, with the exception of certain worker Board Members of Commercial State Bodies.

**Travel and Official Entertainment**
A framework for Travel Policy for State Bodies is provided for in the Code and all State bodies must aim to achieve economy and efficiency for such expenses and must comply with DPER circulars and notices.

**Quality Customer Service**
The Code requires all State Bodies to have a Customer Charter which must be a short, easy to read and accessible document, based on the 4 step cycle outlined in the Code and which must be displayed prominently (on websites and points of service). It must be supported by a customer action plan which is a more detailed document which describes delivery of the commitments in the charter.

**Conclusion**
State Bodies are required to operate in a transparent manner, to be clearly accountable and demonstrate their commitment to achieving the highest standards of governance. This Code places a strong emphasis on effective and responsible leadership and the setting and monitoring of strategic goals to provide value for money.

The Code had been generally favourably received across State Bodies, but it is universally acknowledged that it will take time to review and digest the Code and assess any gaps there may be in financial and operational governance processes and procedures. Over the coming months the Code will need to be implemented in full. This will require engagement with the Chairperson, the Board and senior management so that the necessary assessments are completed and processes, procedures and controls are in place to facilitate the various reporting requirements under the Code.

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