



Public & Regulatory Law Update

February 2009

Financial Emergency Measures in the Public Interest Bill 2009

The Financial Emergency Measures in the Public Interest Bill 2009 was published on 18 February 2009 and will be enacted shortly. It introduces a number of financial emergency measures including:

- introducing a new deduction from public servants' pay where they are members of a public service pension scheme; and
- provisions to allow public bodies to reduce the professional fees paid by them to external service providers.

Pensions levy. A deduction will be made from all public servants who, on 1 March 2009 or at any time afterwards:

- are members of a public service pension scheme;
- are entitled to a benefit under such a scheme; or
- receive a payment in lieu of membership in such a scheme.

The deduction which will apply from 1 March 2009 is as follows: a 3% deduction on the first 15,000 euros; 6% on the next 5,000 euros; and 10% on the remainder.

"Remuneration" is defined as total earnings, including allowances, overtime or any other like payment, payable by or on behalf of a public service body to a public servant. "Public servants" are office holders or employees of public service bodies. "Public service body" is widely defined to include the Civil Service, the Garda Síochána, the Permanent Defence Force, local authorities, the Health Service Executive, the Central Bank and Financial Services Authority of Ireland, vocational educational committees, primary and secondary schools, third-level institutions, and the non-commercial semi-state bodies where a public service pension scheme exists or may be made. The Bill allows the Minister for Finance to exempt a class or group from some or all of the deduction if he is satisfied they are materially distinguished by some particular aspect of their employment terms from others subject to the deduction. Deductions will be repaid to those who leave the public service with no preserved pension benefit, that is, with less than two years' service.

Professional fees reduction. Under the Bill the Minister for Health and Children may, following consultation, reduce payments to health professionals for services provided to or on behalf of a health body (the Health Service Executive and any other body under the aegis of the Minister for Health and Children.) Health professionals covered under the Bill include medical practitioners; dentists; pharmacists; optometrists; ophthalmologists; podiatrists; and chiropodists. The Bill further provides that any Government minister may make regulations to reduce payments for services provided to or on behalf of any Government department in the same way as the health professionals' fees reduction.



New Codes of Conduct for mortgage arrears and lending

On 13 February 2009 the Financial Regulator published the Code of Conduct for Mortgage Arrears and the Code of Conduct for Business Lending to Small and Medium Enterprises. Both Codes are statutory codes and regulated entities subject to them will be required to demonstrate compliance.

Mortgage Arrears Code. This Code builds on the Irish Banking Federation's voluntary Code of Practice. It applies to the mortgage lending activities of all regulated entities operating in Ireland to consumers in respect of their principal private residence in Ireland. It is to be read as one with the Financial Regulator's Consumer Protection Code.

More specifically it sets out a framework within which lenders must operate, with due regard to the fact that each lender adopts a different competitive approach to lending and each mortgage arrears case is unique and needs to be treated differently. It states that lenders must adopt flexible procedures for the handling of arrears cases that are aimed at assisting the borrower as far as possible. It also sets out what the lender must do when managing mortgage arrears cases. However, the lender may enforce the mortgage in circumstances where application of the Code is not appropriate, such as, in the case of fraud.

Business Lending Code. This Code will apply to all regulated banks and building societies excluding credit unions that lend to small and medium enterprises (SMEs) operating in Ireland. It aims to facilitate access to credit and promote fairness and transparency.

It sets out procedures under five main headings;

1. Credit facilities: the processes a regulated entity is required to adopt in facilitating access to credit for businesses.
2. Financial difficulties: the procedures a regulated entity must have in place for the handling of arrears when an SME gets into financial difficulty.
3. Provision of information: the way in which a regulated entity must provide the relevant information required under the Code to the borrower.
4. Handling complaints: the written procedure a regulated entity must have for the proper handling of complaints with the objective of resolving the complaint as soon as possible.
5. Retention and production of documents: the records required to be maintained under the Code by a regulated entity.

Whistleblowing in the health service

Whistleblowing is where an employee (or "whistleblower") makes a disclosure to an employer or regulator about a dangerous or illegal activity or omission in their workplace. Most of the whistleblowing provisions in the Health Act 2007 (the Act) will come into effect on 1 March 2009. The Department of Health and Children has indicated that this new law is being introduced as a result of a number of scandals in the health service, some of which the Department believes may have been unearthed sooner if potential whistleblowers had not been deterred by the threat of civil litigation.

Section 103 of the Health Act 2007 amends the Health Act 2004 and provides for the making of protected disclosures by health service employees. Subject to fulfilling certain criteria, the whistleblower will be protected from being dismissed or penalised where he makes a disclosure in good faith.



What is a protected disclosure?

A disclosure is protected where an employee in a relevant body (such as the Health Service Executive (HSE) and various healthcare service providers) makes, in good faith, a disclosure to an authorised person and the employee has reasonable grounds for believing that it will show one or more of the following:

- a. that the health or welfare of a person who is receiving a health or personal social service in accordance with the Health Act 2007 has been, is or is likely to be at risk;
- b. that the actions of any person employed by or acting on behalf of the relevant body has posed, is posing or is likely to pose a risk to the health or welfare of the public;
- c. that the relevant body or a person employed by or acting on behalf of the relevant body failed, is failing or is likely to fail to comply with any legal obligation to which the relevant body or person is subject in the performance of the relevant body's or person's functions;
- d. that the conduct of the relevant body or of a person employed by or acting on behalf of the relevant body has led, is leading or is likely to lead to a misuse or substantial waste of public funds;
- e. that evidence of any matter falling within any of paragraphs (a) to (d) has been, is being or is likely to be deliberately concealed or destroyed.

Every relevant body must nominate an authorised person to whom disclosure can be made.

Similarly, disclosures made by persons to a professional regulatory body and, in certain circumstances, to the Health Information and Quality Authority or the Inspector of Mental Health Services are also protected under the Act. The professional regulatory bodies covered are An Bord Altranais; the Dental Council; the Health and Social Care Professionals Council; the Medical Council; and the Pharmaceutical Society of Ireland.

Upcoming event

Beauchamps is participating in a Public Affairs Ireland seminar on "Conducting Effective Public Consultation Processes" on 6 March 2009. The seminar will be focussed on giving practical guidance to the public sector on the role of consultation processes. Niall O'Brien, Head of the Public and Regulatory Law Unit will be speaking at it.

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