

Employment Law: Legislative Updater - July 2016

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Welcome to the ByrneWallace Employment Law Legislative Updater - July 2016.

Summary of Legislative Developments

The Updater covers legislative updates from April 2016 to June 2016 (inclusive). While there has not been significant activity during this period, there have been some important developments. The highlights of this issue include;

- The commencement of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 on 29 April 2016.
- The Paternity Bill which provides for two week's paternity leave to all "relevant parents" and the payment of a new social welfare payment of Paternity Benefit.
- The extension of Part 2 of the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 for an additional three years, until 7 April 2019.
- The Public Holidays (Lá na Poblachta) Bill 2016 [PMB] which proposes an additional public holiday falling on April 24th to commemorate those who gave their lives to pursue the freedom of the Irish nation.

Statutory Instruments

Pharmaceutical Society of Ireland Superannuation Scheme 2016 [S.I. No. 136/2015]

These Regulations adopt the Rules prescribed in the Schedule to the Rules for Pre-existing Public Service Pension Scheme Members Regulations 2014 (S.I. No. 582 of 2014) as a Scheme for the granting of superannuation benefits to staff of the Pharmaceutical Society of Ireland. This Scheme also applies to the Registrar and to the eleven staff of the Society who were employees of the Society as constituted and incorporated by Section 4 of the Pharmacy (Ireland) Act 1875. This extension to the eleven staff is only in respect of service on or after 22 May 2007.

[Click here for full text \(in PDF format\)](#)

Rules of the Superior Courts (Service of Documents) 2016 [S.I. No. 148/2016]

These Rules substitute the provisions of Order 121, rule 2(1) of the Rules of the Superior Courts. While the entirety of rule 2(1) is substituted, the text only contains a minor amendment to provide that rule 2(1), which prescribes the methods of delivery or service of documents which are not required to be personally served, are subject to any other methods of delivery or service specified in other provisions of the rules for particular types of proceedings.

[Click here for full text \(in PDF format\)](#)

Occupational Pension Schemes (Revaluation) Regulations 2016 [S.I. No. 152/2016]

These Regulations provide that the revaluation of preserved pension benefits for 2015, pursuant to section 33 of the Pensions Act 1990, shall be 0.3%.

[Click here for full text \(in PDF format\)](#)

Workplace Relations Act 2015 (Section 37) (Commencement) Order 2016 [S.I. No. 206/2016]

This Order provides that section 37 of the Workplace Relations Act 2015 commenced on 1 May 2016. From that date, the power vested in the Minister for Jobs, Enterprise and Innovation to bring and prosecute proceedings is transferred to the Workplace Relations Commission.

[Click here for full text \(in PDF format\)](#)

Financial Services Ombudsman Bureau Ombudsman and Deputy Ombudsman Superannuation Scheme 2016 [S.I. 209/2016]

These Regulations adopt the Rules prescribed in the Schedule to the Rules for Pre-existing Public Service Pension Scheme Members Regulations 2014 (S.I. No. 582 of 2014) as a Scheme for the granting of superannuation benefits to the Ombudsman and the Deputy Ombudsman of the Financial Services Ombudsman Bureau. Provision is also made to facilitate additional contributions at such rates as the Minister for Public Expenditure and Reform deems necessary to meet the cost of benefits provided by the scheme.

[Click here for full text \(in PDF format\)](#)

Financial Services Ombudsman Bureau Staff Superannuation Scheme 2016 [S.I. No. 210/2016]

These Regulations adopt the Rules prescribed in the Schedule to the Rules for Pre-existing Public Service Pension Scheme Members Regulations 2014 (S.I. No. 582 of 2014) as a Scheme for the granting of superannuation benefits to members of staff of the Financial Services Ombudsman Bureau subject to certain modifications. Membership of the Scheme does not apply to serving staff member, as distinct from a pensionable employee, as at 1 April 2005 who did not elect to join the Scheme before 30 September 2005.

[Click here for full text \(in PDF format\)](#)

National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (Commencement) Order 2016 [S.I. No. 214/2015]

This Order provides that the National Vetting Bureau (Children and Vulnerable Persons) Act 2012, apart from section 20, shall come in to operation on the 29 April 2016. The Act provides a legislative basis for the vetting of persons who seek positions of employment relating to children or vulnerable persons.

[Click here for full text \(in PDF format\)](#)

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (Commencement) Order 2016 [S.I. No. 215/2016]

The Order provides that the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 shall commence on 29 April 2016. The Act provides that convictions may be regarded as spent once certain conditions are satisfied. Where a conviction is regarded as a spent conviction, that person is not required to disclose the conviction itself or the circumstances ancillary thereto when seeking employment or entering employment, except in limited cases specified in the Act.

National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (Appeals) Regulations 2016 [S.I. No. 219/2016]

Section 14(3) of the Act provides that where there is specified information, i.e. information concerning a finding or allegation of harm to another person, relating to a person who is the subject of an application for vetting disclosure, the matter shall be referred for assessment and determination to the Chief Bureau Officer. The Officer shall assess the application and make a determination that the information concerned be disclosed or not. A decision to disclose the specified information requires the Chief Bureau Officer to believe that the information in question is of such a nature as to give rise to a bona fide concern that the vetting subject may harm, attempt to harm or put at risk of harm a child or vulnerable person. These Regulations provide the procedure for appeals from determinations of the Chief Bureau Officer and sets out further compliance requirements in addition to those set out in section 18 of the Act. Appeals can heard with or without an oral hearing.

[Click here for full text \(in PDF format\)](#)

Data Protection Act 1988 (Section 2A) Regulations 2016 [S.I. No. 220/2016]

The Act provides that personal data shall not be processed unless certain conditions are met. One of those conditions is that "processing is necessary for the purposes of the legitimate interests pursued by the data controller... except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject." These Regulations provide that this condition shall be satisfied in relation to the processing by an air or sea carrier of relevant information where the relevant information relates to a person who is either departing from the State and arriving in the UK or vice

versa by air or by sea and the disclosure concerned is requested by the Home Secretary.

[Click here for full text \(in PDF format\)](#)

National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (Section 21) (Prescribed Period) Regulations 2016 [S.I. No. 223/2016]

Section 21 of the Act provides for retrospective vetting for persons who are in employment/under a contract for services prior to the commencement of the Act and that individual had not previously been the subject of an application for vetting disclosure. These Regulations provide that this retrospective vetting is to be carried out no later than 31 December 2017.

[Click here for full text \(in PDF format\)](#)

Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (Duration of Part 2) Order 2016 [S.I. No. 224/2016]

This Order extends the period for which Part 2 of the Act shall have effect until 7 May 2019. Part 2 sets out what constitutes an exceptional redundancy, establishes a Redundancy Panel and allows for case referrals to this Panel in instances where proposed redundancies are considered to constitute exceptional collective redundancies.

[Click here for full text \(in PDF format\)](#)

Public Service Management (Recruitment and Appointments) Act 2004 (Extension of Application to the Policing Authority) Order 2016 [S.I. No. 230/2016]

This Order extends the recruitment and appointment provisions of the Act to positions or classes of positions within the Policing Authority.

[Click here for full text \(in PDF format\)](#)

Health Professionals (Variations of Payments to General Practitioners) Regulations 2016 [S.I. No. 233/2016]

These Regulations set out the rates of pay for general practitioners in respect of services to or on behalf of the Health Service Executive under a number of Schemes.

[Click here for full text \(in PDF format\)](#)

**National Milk Agency Superannuation Scheme 2016
[S.I. No. 324/2016]**

These Regulations adopt the Rules prescribed in the Schedule to the Rules for Pre-existing Public Service Pension Scheme Members Regulations 2014 (S.I. No. 582 of 2014) as a Scheme for the granting of superannuation benefits to members of staff of the National Milk Agency.

[Click here for full text \(in PDF format\)](#)

Notable Bills

Paternity Leave and Benefit Bill 2016

This Bill seeks to give effect to the decision in Budget 2016 to provide two weeks' paternity leave. This entitlement is not confined to fathers but rather to a "relevant parent" which extends to same sex couples. The purpose of the leave is to enable the "relevant parent" to provide or assist in the provision of care to the child and to provide support to the mother of the child (or sole male adopter). A key requirement is that the leave must be used to take care of the child to which the leave relates.

The Bill provides that a relevant parent shall be entitled to 2 weeks paternity leave, such leave to be taken in a single period of time. Paternity leave can be taken between the date of confinement/placement and a date not later than 26 weeks after such a date.

Entitlement to paternity leave shall be subject to the employee notifying the employer in writing of their intention to take paternity leave. This should be as soon as reasonably practicable, but not later than 4 weeks before the expected week of confinement of the expectant mother concerned or the expected day of placement in adoption cases.

Part 3 of the Bill relates to the protection of the employment of the employees who avail of paternity leave. It brings paternity leave in line with maternity and adoptive leave and provides that the rights of the employee taking paternity leave shall be preserved during the period of leave. Additionally any purported terminations of employment while the employee is absent on paternity leave shall be void. The Bill also prohibits the penalisation of an employee for having exercised their right to take paternity leave.

Part 4 of the Bill provides for the resolution of disputes relating to any entitlement of an employee under Parts 2 and 3 of the Bill and outlines the remedies an adjudication officer of the Workplace Relations Commission may award, namely the granting of the leave for such period as may be specified and an award of

compensation not exceeding two weeks remuneration, or both.

Part 5 inserts a new chapter 11A in to the Social Welfare Consolidation Act 2005 to provide a new social welfare payment of Paternity Benefit. Relevant parents who are in insurable self-employment are also entitled to this benefit.

The Bill was presented by Tánaiste and Minister for Justice and Equality, Frances Fitzgerald on 16 June and has moved onto the Select Committee of Dail Eireann on 24 June.

[Click here for full text \(in PDF format\)](#)

Public holidays (Lá na Poblachta) Bill 2016 [PMB]

The Bill proposes that April 24th in each calendar year shall be a public holiday within the meaning of the Holiday (Employees) Act 1973. The holiday shall be known and referred to as Lá na Poblachta and the Bill proposes amendments to the Organisation of Working Time Act 1997 to reflect this proposed additional public holiday. The Act also provides for the establishment of a Board Lá na Poblachta to organise commemorative events in each county to acknowledge the contribution made to the Irish nation by those who gave their lives and liberty to pursue the freedom of the Irish nation.

This Private Members Bill was introduced by Deputy Aengus Ó Snodaigh on 9 June 2016 and has yet to move onto the Second Stage before Dail Eireann.

[Click here for full text \(in PDF format\)](#)

Industrial Relations (Right to Access) (Amendment) Bill 2016 [PMB]

This Bill seeks to amend the Industrial Relations (Amendment) Act 2015 so as to allow Trade Unions access to their members in the workplace for purposes related to the employment of its members or for purposes related to the union's business or both. The Bill proposes to allow representatives of a union to enter a workplace for purposes related to the employment of its members or related to the union's business. Before so entering, the trade union representative must request and obtain the consent of the employer to enter the workplace, such consent may not be unreasonably withheld. If the employer does not respond to such a request within 2 working days, consent will be treated as having been obtained. Conditions are placed upon the union representative's access including identification requirements, health and safety and security requirements.

The Union must give the employer 14 days' notice of the date and time of any meetings and must make arrangements with the employer to ensure that the employer's business is maintained during any union meeting with its members. An employer must allow every union to attend at least 1 union meeting (no more than 2 hours in duration) in the calendar year 2016 and at least 2 union meetings in each year after 2016 on ordinary pay. An employer will not be obliged to pay any union member for a period longer than 2 hours in respect of any meeting.

This Private Members Bill was introduced by Deputy David Cullinane on 21st June 2016 and has yet to move onto the Second Stage before Dail Eireann.

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