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Contents

Page No.

1. **Payment of fines**
New legislation provides for different ways of paying fines.

3. **Advance healthcare directives**
Proposed legislation provides for the making of directives which are enforceable if you are no longer capable of making healthcare decisions.

5. **Health Identifiers Bill 2013**
This Bill provides for the assignment of a unique health identifier to all health service users and providers in order to improve patient care.

6. **Irish Human Rights and Equality Commission**
This deals with the merger of the Human Rights Commission and the Equality Authority.

7. **Competition and Consumer Protection Bill 2014**
This deals with the amalgamation of the Competition Authority and the National Consumer Agency as well as some other changes to consumer and competition legislation.

8. **Other legislation**
GP services for children under six and whistleblowers legislation.

Payment of fines

The Fines (Payment and Recovery) Act 2014 provides for a number of changes to the way in which fines may be paid. Among other things, it provides for the payment of fines by instalment, by attachment and recovery orders if appropriate, and by the substitution of community service orders for the fines. Ultimately, you may be imprisoned for non-payment but the Act also provides for a reduction in the maximum term of imprisonment.

The Act is not yet in effect but it is expected that the instalment provisions will be in effect in autumn 2014 and the other provisions soon after that. The following is a summary of the current rules and the changes made by the 2014 Act.

Current rules on imprisonment for failure to pay fines

At present, when the judge imposes a fine, you are told the date by which the fine must be paid. At the same time, the judge signs a warrant for your arrest and imprisonment in the event that you fail to pay the fine. This warrant is executed if you fail to pay the fine by the date indicated. The matter does not go back to the court. You may be sent to prison for up to 90 days.

The 2014 Act aims to ensure that very few people go to prison for non-payment of fines. More than 8,000 people were imprisoned for non-payment of fines in 2013. At any one time, a small number of people are in prison for non-payment of fines, for example, on 25 February 2013, there were 22 such people in a total prison population of 4,261. The Prison Service has said that 242 people were imprisoned in 2012 in connection with the non-payment of a television licence fee; of these, 236 were released within hours.

Half of all fines imposed are for less than €200 and the average fine is just over €300.

INSIDE: Setting the level of fines p2, Payments by instalments p2, Community service orders p2, Court poor box p3, What is an advance healthcare directive p4, Appointing a person to make decisions p5, Individual health identifier p5, Protection of whistleblowers p8

Setting the level of fines

In general, legislation governing the various offences for which you may be fined specifies a maximum level of fine. The judge decides the level. This is done after taking a number of factors into account including the seriousness of the offence, your degree of guilt, your co-operation with the court and any relevant previous offences. Since early 2011, your ability to pay also has to be taken into account (under the Fines Act 2010). The aim is to ensure that where a fine is imposed, the effect is not significantly abated or made more severe because of your financial circumstances. This provision is repeated in the 2014 Act. Taking your financial circumstances into account means that the judge, in setting the level of the fine, which in this context includes any costs, compensation or expenses which you have been ordered to pay, takes account of:

- Your annual income
- The value of all your property
- The amount of your liabilities including your financial obligations to your family or other people
- Money owed to you
- Other circumstances which are considered appropriate

It is an offence not to provide information or to provide false or misleading information about your financial circumstances. The penalty for such an offence is a Class B fine (maximum €4,000) or six months' imprisonment.

Payment by instalments

The Fines Act 2010 provided for the payment of fines by instalments but this has not been brought into effect. It provided that you needed to apply to the court to be allowed use instalments. The 2014 Act gives you an automatic right to pay by instalments.

The 2014 Act provides that, if a fine (or combined fines) of over €100 is imposed, you may choose to pay by instalments over a period of a year. The first instalment must be made within 42 days of the imposition of the fine. If you decide to pay by instalments you also have to pay an administrative charge of up to a maximum of 10%.

If the fine is not paid in full, you will be required to appear in court and to provide a statement of your financial circumstances. The judge will then consider the imposition of an attachment order or a recovery order.

Attachment orders

Attachment orders are orders to your employer or occupational pension payer to deduct an amount from your earnings or pension and pay this amount to the Courts Service. They are mainly used at present for the payment of maintenance orders for spouses and children. The 2014 Act provides that they may be made in cases where fines have not been paid.

If you fail to pay your fine or an instalment of it, you will be brought back to court and the judge will consider whether or not to make an attachment order. In general, attachment orders are likely to be imposed if you are employed and have enough earnings to pay the fine, or if you can afford to pay it from your occupational pension.

If an attachment order is imposed, your employer or pension payer is obliged to comply with it and you are obliged to tell the Courts Service if you change employer or become unemployed.

There are no provisions for the deduction of fines from social welfare payments. The Minister for Justice has said that there are no plans to introduce such arrangements.

Recovery orders

If an attachment order is not suitable, for example, if you are not employed, the judge may make a recovery order if the fine is more than €500.

The 2010 Act provided that recovery orders would be made automatically when a fine was imposed; this has not been brought into effect. The 2014 Act provides that a recovery order may be made if the court decides that you have the means to pay the fine or you have assets that can be seized and sold in order to pay the fine and the expenses and fees of the receiver or sheriff.

Community service orders

The 2010 Act provided that a community service order would be considered only if you had failed to pay the fine or a receiver had failed to recover it. The 2014 Act provides that a community service order may be made in all cases of default where the court decides that it would not be appropriate to make an attachment or a recovery order.

The Criminal Justice (Community Service) Act 1983 provides that community service orders may be made if you are willing to comply with the order and the Probation Service considers that you are a suitable person for such an order. These conditions will also apply to the imposition of community service orders in the event of the non-payment of fines.

If the fine is in respect of a conviction on indictment, the order may provide for between 40 and 240 hours of community service; if it is in respect of a summary conviction the order may provide for between 30 and 100 hours.

Imprisonment for non-payment of fines

When the 2014 Act is fully implemented, imprisonment for non-payment of a fine should arise only if it is not possible to make a community service order or a community service order is made but you fail to comply with it.

If you are imprisoned for the non-payment of a fine, the term may be between 5 and 30 days in the case of a summary offence, for example, failure to pay a TV licence, and up to 12 months in the case of an indictable offence.

Amount of fine summary offence	Maximum term of imprisonment
Up to €500	5 days
€500 – €1,500	10 days
€1500 – €3000	20 days
More than €3000	30 days

Sharing of information

The 2014 Act also provides that the Revenue Commissioners and the Department of Social Protection and other bodies which may be prescribed must provide the courts with any information which the courts may need in order to recover the fines.

Court poor box

Sometimes judges of the District Court tell people who are before the court in relation to minor offences to pay an amount of money into the court poor box. This is usually instead of a conviction and/or fine. There is no statutory basis for this practice. The *Annual Report of the Courts Service* shows that almost €2 million was collected in this way in 2012. The proceeds of the poor box are distributed to charities and community organisations.

The Law Reform Commission has recommended its abolition and its replacement with a statutory reparation fund in its report, *The Court Poor Box: Probation of Offenders*. The Government has decided to implement this. The intention is that new legislation will replace the Probation of Offenders Act 1907. The General Scheme of the proposed Criminal Justice (Community Sanctions) Bill 2014 is on the Department of Justice website: **justice.ie**

This proposed legislation will provide for, among other things, the abolition of the court poor box. In cases of minor offences, a person may be ordered to pay money into a statutory reparation fund; the maximum reparation order will be €5,000. This fund will be used to provide additional funding for services for victims of crime and compensation payments payable by the Criminal Injuries Compensation Tribunal. The fund may not be used for any other purpose. Reparation orders will apply only to minor offences and not to more serious offences which may be tried in the Circuit Court.

Compensation to victims

Sometimes, the payment of compensation to a victim of crime is taken into account by the court when sentence is being imposed. The proposed Criminal Justice (Community Sanctions) Bill 2014 would break any link between the payment of compensation and the imposition of a sentence. It will provide that a compensation order may be made in addition to any other sanction and not as a substitute for a sanction. This provision will apply to all offences, not only to minor offences.

Advance healthcare directives

The Assisted Decision-Making (Capacity) Bill 2013 is currently before the Oireachtas – see *Relate*, October 2013 for a description of its proposals. It is intended that the Bill will be amended to provide for the making and legal recognition of advance healthcare directives. The Department of Health has published the General Scheme of the proposed amendments. This General Scheme broadly follows the recommendations of the Law Reform Commission's report *Bioethics: Advance Care Directives*. Website: **lawreform.ie**

The aim of the proposed legislation is to:

- Promote personal autonomy or self-determination in relation to treatment choices
- Enable people to be treated according to their will and preferences
- Provide healthcare professionals with information about patients and their choices in relation to treatment

It is based on the principles that:

- All adults are presumed to have capacity unless there is evidence to the contrary
- An advance healthcare directive should be made on the basis of informed decision making; this means that you understand the options available to you, the likely benefits and risks associated with the treatment in question and the consequences of refusing treatment. This information is

normally provided by your treating doctor but you may get it from other sources. You will be encouraged to get professional advice before making an advance healthcare directive but this will not be mandatory
- An adult with capacity is entitled to refuse treatment for any reason, including religious reasons, even where the decision to refuse appears to be unwise or not to be based on sound medical principles, and even where this refusal may result in death

Consent to medical treatment

At present, except in the case of emergencies, your consent is required before any treatment can be administered. You are entitled to refuse treatment if you have the capacity to do so. Treatment includes life-sustaining treatment. If you have the capacity to make the decision, you are entitled to refuse medical treatment even if the inevitable result is that you will die.

It is an offence for a medical professional to provide treatment to which you do not consent. The proposed legislation will not change the law in this respect but will provide a statutory basis for the law, and will provide a framework for making decisions while you have capacity which will be enforceable should you lose that capacity. It also will allow for you to appoint another person to make such decisions for you if necessary.

The following is a summary of the proposed legislation.

What is an advance healthcare directive

An advance healthcare directive (AHD) is defined in the General Scheme as "an advance written expression of will and preferences made by a person with capacity ... concerning treatment decisions that may arise in the event that the person subsequently loses capacity". So, it expresses in writing a decision you make while you have the capacity to make such decisions, in which you outline the kind and extent of medical or surgical treatment you want in the future should you be unable to make a specific decision at the relevant time. Sometimes these statements are described as "living wills", "advance statements", "advance decisions" or "advance refusals".

The proposed legislation provides that an adult who has legal capacity may make an AHD and sets out the conditions which must be met for the directive to be considered legally valid and enforceable. The directive may cover medical care and treatment as well as mental healthcare and treatment.

Conditions for making a valid directive

In order for the directive to be valid, it must be in writing but there will not be a prescribed form. It must include the following information:
- Your name, date of birth and address
- The name and address of your general practitioner (GP) or other healthcare professional, and
- The name and address of any nominated patient-designated healthcare representative (see below) and/or any attorney appointed under an enduring power of attorney

It is expected that there will be a code of practice which will provide guidance about any other information that it would be appropriate to include.

Your signature to the directive must be witnessed by two adults, one of whom must not be a family member and must not be entitled to inherit any of your estate. The witnesses have the same function as witnesses to a will; they witness your signature and sign to that effect. Their signatures in themselves do not make the directive valid or invalid or express any view on whether or not you had the capacity to make an AHD.

You may revoke the directive at any time if you have the capacity to make that decision. The revocation need not be in writing but it should be recorded in your healthcare record. Any other changes to the directive must be in writing and witnessed in the same way as the original directive.

Effect of directive

An advance healthcare directive will not be valid if:
- You did not have the capacity to make it
- You did not make it voluntarily
- You had communicated a change or revocation of the directive
- You had done something which was clearly inconsistent with the content of the directive

The AHD will not apply in circumstances where you are capable of making a decision to accept or refuse treatment. It will apply to life-sustaining treatment only if you specify in writing that it is to apply to that treatment even if your life is at risk. It will not apply to the administration of basic care. "Basic care" includes, but is not limited to, warmth, shelter, oral nutrition and oral hydration and hygiene measures. It is intended that the full extent of basic care will be set out in a code of practice.

If there is doubt about the validity or applicability of the directive, the healthcare professional concerned must consult your patient-designated healthcare representative or, if you do not have one, with your family and friends and must look for the opinion of a second healthcare professional in an effort to clarify any ambiguity. If there is still doubt, the doubt is to be resolved in favour of the preservation of life.

In general, an AHD will apply to medical and mental health treatments. However, it will not apply to the treatment of patients involuntarily detained under the Mental Health Act 2001 and certain people being treated under the Criminal Law (Insanity) Act 2006.

Refusal of treatment

If your directive states that you refuse treatment, that preference must be followed by the treating doctors if:

- The treatment to be refused is clearly specified
- The circumstances in which the treatment refusal is intended to apply are clearly outlined
- At the time the AHD is to be followed, you no longer have the capacity to consent to the treatment in question

Request for treatment

The proposed legislation is dealing mainly with the refusal of treatment. It does not mean that you will have the right to demand specific treatments or interventions in all circumstances. You may include specific treatment requests in your AHD. Your request will be taken into account but your treating doctors will not be required to provide the specified treatment. There will be a code of practice dealing with how treatment requests should be handled. It is clear that such requests will not be legally binding.

Appointing a person to make decisions

The proposed legislation allows for the appointment of a "patient-designated healthcare representative". This is a person whom you appoint in your AHD to either clarify the terms of the directive or to make treatment decisions on your behalf if you no longer have the capacity to do so.

The person you appoint must:

- Be aged 18 or over
- Not be a person who provides paid personal care or paid healthcare services to you unless this person is your spouse or civil partner, parent, child or sibling
- Not be the owner or employee of a residential or healthcare facility where you live unless the person is your spouse or civil partner, parent, child or sibling

You may give your healthcare representative a power limited to ensuring that the terms of your AHD are carried out, or you may give a general power to consent to or refuse treatment, up to and including life-sustaining treatment.

The Assisted Decision-Making (Capacity) Bill 2013 already provides for attorneys appointed under an enduring power of attorney to have the right to make certain healthcare decisions.

Health Identifiers Bill 2013

The Health Identifiers Bill 2013 has been passed by the Seanad and is currently being discussed in the Dáil. The aim of the Bill is to put in place a national unique identifier for patients and for health service providers for use throughout the health service, both public and private. A unique identifier system for patients was recommended by the Commission on Patient Safety and Quality Assurance. Unique identifier systems for both patients and providers have been recommended by the Health Information and Quality Authority (HIQA). The main aim of unique identifiers is to improve patient care.

Individual health identifier (IHI)

The individual health identifier (IHI) will be a number assigned to each individual user of health services. This will be used in your patient records and in communications with health services personnel. There will be a national register of individual health identifiers. The register will not contain any information about your health. The register will not be publicly available and may be accessed only by specified people.

The register will have your number and the following information about you – your forename and surname, date of birth, place of birth, sex, former surnames, your mother's surname and former surnames, your address, nationality, Personal Public Service Number (PPSN), signature and photograph. It will also have the date of death in the case of people who have died. Other information may be prescribed by the Minister for Health for inclusion in the register but this may not include clinical information.

When the register is being set up, information which is already available to the Minister for Health and the Health Services Executive (HSE) may be used for inclusion in the register. If you are using a health service, you will be asked for the necessary

information if it is not already available. Health services providers will have an obligation to help to ensure that the information on the register is accurate. Other government departments and offices, for example, the Department of Social Protection and the Registrar of Births, Marriages and Deaths may, and in some cases, must provide information for the purposes of the register.

Accessing the register

The register may be accessed by the Minister for Health (who may delegate his functions to the HSE), health services providers and certain other people who will be specified. They may access the register only for a relevant purpose. The primary relevant purpose is the provision of a health service to an individual. Secondary relevant purposes are:

- The promotion of patient safety, including clinical auditing and the investigation and reporting of patient safety incidents
- The identification and prevention of a threat to public health
- The management of health services, including planning and monitoring, the investigation of complaints and the provision of health insurance

The Bill provides that it will be an offence to inappropriately access the register. The information on the register will be regarded as personal information for the purposes of the Data Protection Acts. Among other things, that means that you will be able to get a copy of the information and have it corrected if it is inaccurate.

Certain bodies will not be able to access the register but information from the register may be provided to them. They are called "authorised disclosees" in the Bill. They include bodies such as the Child and Family Agency, HIQA, professional regulatory bodies, health insurance companies, coroners, the Central Statistics Office.

Health services providers

Health services providers will each have a unique identifier. Health services providers include health professionals, for example, doctors, nurses, pharmacists and opticians, as well as health service organisations, for example, hospitals and GP practices. There will also be a national register of health services provider identifiers which will be publicly available.

Various bodies including professional regulatory bodies (for example, the Medical Council) will be obliged to provide information for the register and to help ensure that the register is accurate.

Entitlement to health services

The Bill does not deal with entitlement to health services. It makes clear that having or not having an individual health identifier will not affect your entitlement to health services and health services providers may not refuse to provide you with services merely because you do not have an identifier or you refuse to provide it.

Irish Human Rights and Equality Commission

In 2011, the Government decided to merge the Human Rights Commission and the Equality Authority into one new body. The Irish Human Rights and Equality Commission Bill 2014 provides for the statutory establishment of the new body. Since 2013, the two existing bodies have been operating jointly on an administrative basis. The Bill is currently before the Oireachtas.

The 2014 Bill provides that the main functions of the Commission will be:

- To protect and promote human rights and equality
- To encourage the development of a culture of respect for human rights, equality, and intercultural understanding
- To promote understanding and awareness of the importance of human rights and equality
- To encourage good practice in intercultural relations and to promote tolerance and acceptance of diversity
- To work towards the elimination of human rights abuses, discrimination and prohibited conduct, while respecting diversity and the freedom and dignity of each person

In order to carry out these functions, the Commission will be required to or will have the power to, among other things:

- Provide information to the public in relation to human rights and equality generally
- Keep under review the adequacy and effectiveness of law and practice relating to the protection of human rights and equality
- Examine any legislative proposal and report its views on any implications for human rights or equality
- Make recommendations in relation to the measures which it considers should be taken to strengthen, protect and uphold human rights and equality
- Apply to the High Court or the Supreme Court to appear as *amicus curiae* (friend of the court) in proceedings that

involve or are concerned with the human rights or equality rights of any person
- Provide help, including legal assistance to people vindicating their rights
- Provide help with research and education and training in relation to human rights and equality
- Carry out equality reviews and prepare equality action plans

Members of the Commission will be appointed by the President on the advice of the Government. (Members have been appointed on an interim basis to the two existing bodies.)

Duty on public bodies

The Bill provides that there will be a duty on public bodies to have regard, in the performance of their functions, to the need to promote equality of opportunity and treatment. The new Commission will have the power to support public bodies in doing this.

Inquiries

The Commission will have the power to conduct inquiries in situations where there is evidence of a serious violation of human rights or equality of treatment obligations, or a systematic failure to comply with human rights or equality treatment obligations and the matter is of serious public concern. The conduct of these inquiries will be similar to the conduct of inquiries under the Commissions of Investigation Act 2004. In the course of an inquiry or following an inquiry, an equality and human rights compliance notice may be published. This notice will specify the nature of the discrimination or violation of rights found, the steps required to address the problem and the timeframe within which it must be addressed. The people on whom such a notice is served will be required to comply with it.

European Convention on Human Rights

The Bill also proposes to amend the European Convention on Human Rights Act 2003 to provide for a right to compensation for a person whose detention is found to be in breach of the European Convention on Human Rights and where the detention was as a result of judicial error. The European Court on Human Rights found that Ireland was in breach of the Convention by failing to have such an enforceable right.

Equality Tribunal

This 2014 Bill does not provide for the proposed changes to the Equality Tribunal's role. These changes are likely to be included in planned legislation to establish a Workplace Relations Commission.

Competition and Consumer Protection Bill 2014

The Competition and Consumer Protection Bill 2014 is currently being discussed by the Oireachtas. It provides for the amalgamation of the Competition Authority and the National Consumer Agency and their replacement by the Competition and Consumer Protection Commission. It also provides for changes to the law relating to media mergers and for the regulation of certain practices in the grocery goods sector.

Structure

The Commission will initially be composed of the current members of the Competition Authority and the CEO of the National Consumer Agency. There will not be a board.

Functions

The functions of the new Commission will be broadly the same as the functions of the amalgamated bodies. Its main functions will be:
- To promote competition
- To promote and protect the interests and welfare of consumers
- To carry out investigations into suspected breaches of competition and consumer law
- To enforce consumer and competition law and to encourage compliance with these laws

The Commission will also be expected to promote consumer awareness and encourage the development of alternative dispute resolution procedures as a means of resolving consumer disputes. It will be required to promote the interests of consumers by providing information in relation to financial services and promoting the development of financial education and capability.

The Commission will have stronger enforcement powers in respect of breaches of competition law. In particular, the criminal aspects of enforcement are being strengthened.

Media mergers

At present, the issue of media mergers is dealt with by the Competition Authority. If it decides that the proposed merger is contrary to competition law, the merger cannot go ahead.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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If it decides that it does not contravene competition law, the Minister for Jobs, Enterprise and Innovation may take further steps to have the issue examined and, ultimately, may make an order preventing the merger.

The 2014 Bill provides that the Minister for Communications, Energy and Natural Resources will have responsibility for the final decisions in relation to media mergers. Proposed media mergers and acquisitions must be notified to the Minister. The Minister may allow the merger or acquisition to proceed with or without conditions or may ask the Broadcasting Authority of Ireland to investigate.

Grocery goods

The 2014 Bill gives the Minister for Jobs, Enterprise and Innovation the power to make regulations in relation to various aspects of the relationship between suppliers and retailers of grocery goods. It also provides for the new Commission to inspect and investigate grocery goods undertakings.

Other legislation

Health (General Practitioner Service) Bill 2014

This Bill, which has yet to be discussed in the Oireachtas, deals with the provision of general practitioner services without charge, to children up to the age of six.

Protection of whistleblowers

The Protected Disclosures Bill 2013 has been passed by the Seanad and is currently before the Dáil. It provides for the protection of workers who report alleged wrongdoing in their employments (whistleblowers). It will apply to all employments including the Gardaí.

The protection will apply if the worker has a reasonable belief that the disclosure being made is true even if it ultimately proves not to be. Whistleblowers will be protected from penalisation by employers and from any detriment suffered as a consequence of the actions of others. An employee who is dismissed for whistleblowing will be able to claim relief under the Unfair Dismissals Acts regardless of length of service, and the maximum compensation level in such cases will be five years' pay; the maximum in other unfair dismissals cases is two years' pay. Such employees may apply to the Circuit Court for interim relief.

The Labour Relations Commission is currently drawing up a code of practice that will set out practical details of how a disclosure might be made and how an employer ought to handle such a disclosure.

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