

Legal News



JOHN GLYNN & CO.
SOLICITORS

Personal and Professional Legal Developments

Summer 2004

Welcome

Summer is here at last and it brings another issue of the John Glynn & Co. Legal News. We hope that you find it interesting and informative. It's part of our commitment to the highest standards in everything we do, especially client service.

This issue looks at the State's first conviction for fraudulent trading, the Civil Liability and Courts Bill, additional penalty points offences, the repeal of outdated legislation and much more.

If you would like more information on any topic outlined here, or on any legal matter, please contact us. You can be assured of a friendly and professional service at all times. We look forward to hearing from you.

John Glynn



For the first time, a Company Director is convicted for fraudulent trading

First Conviction for fraudulent trading in State's history

For the first time ever, a company director has been convicted of the specific offence of fraudulent trading. The prosecution was initiated by the Office of the Director of Corporate Enforcement (ODCE). In the case before Naas District Court Mr Sean Gannon, director of Corran Building Services (in liquidation) was convicted on March 18th 2004 of failing to keep proper books of account and failing to make annual returns to the Register of Companies. He received two concurrent sentences of six months each, suspended for one year, and was bound to the peace for one year. The ODCE's Director, Mr Paul Appleby, said the judgement was a significant one and that the case confirms his office's determination to prosecute abuses of company law and directors' legal obligations.

The conviction marks a milestone in Irish company law. Mr Appleby said that his office has a pipeline of 50 criminal investigations and proceedings which are being pursued. It is significant that in the Corran Building Services case, the ODCE and the liquidator collaborated to secure the conviction.

In 2003, the ODCE handled more than 3,000 regulatory issues, and decisions were made on more than 2,000 of these cases. 43 convictions were secured against 26 companies and individuals. More than 150 company directors were restricted by the High Court. Mr Appleby expects to double the number of 2003 convictions in 2004. If you have any questions relating to compliance with company law, please contact us at any time.



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Exterior View of The Four Courts, Dublin 7.

Civil Liability and Courts Bill Published

The Civil Liability and Courts Bill 2004 was published by Mr Michael McDowell TD, Minister for Justice, Equality and Law Reform, on February 13th of this year. The Bill provides for substantive and procedural changes in actions for personal injuries. (It also amends the in-camera rule, particularly in relation to family law cases.) Among the changes proposed which relate to actions for personal injury are the following:

The limitation period for bringing a claim for personal injury will be reduced to 1 year. At present, the limitation period is 3 years.

Any person making a claim for personal injury must outline the grounds on which the claim is being made and provide a "verifying affidavit" which testifies to the truth of all claims and information provided. Defendants must also clearly state any counterclaims and grounds on which they will seek to defend the action. The aim of this provision is to prevent "trial by ambush" and to ensure that all claims and pleadings are upfront and transparent.

Mediation conferences with an independent chairman and pre-trial hearings before a Judge will be encouraged to help parties to settle

actions before incurring all the costs associated with a full trial.

The Bill creates a number of new offences which relate to making false or exaggerated claims for personal injuries. Any person making a false or exaggerated claim, or dishonestly, misleadingly or falsely instructing a solicitor or other expert will be guilty of an offence and is liable to have their claim dismissed in its entirety, as well as facing other penalties.

Changes to PAYE repayment rules

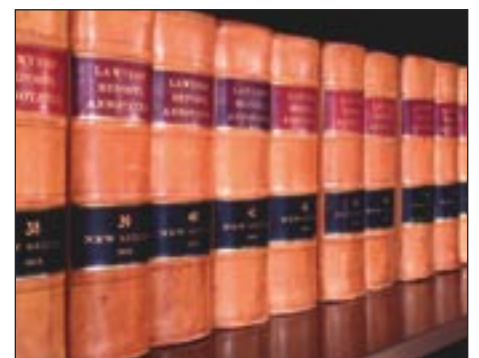
The time limit for claiming back overpaid PAYE tax has been reduced from 10 years to 4 years. The Finance Act 2004 includes rules which mean that claims must be made to the tax office within 4 years of the end of the tax year to which they refer. Transitional time limits will apply to claims for repayments relating to 1994/1995. These claims must be made by 31 December 2004. Any repayment claims for the year 2000/2001 must be made by 5 April 2005. PAYE repayments are often made in respect of unclaimed medical expenses, emergency tax payments, married couple allowances etc.

Security services to be regulated

Following the signing into law on 4th May of the Private Security Services Act 2004, privately operated security services will be regulated in Ireland. As soon as Mr Michael McDowell TD, Minister for Justice, Equality and Law Reform makes the necessary commencement orders, the Act will come into force. The Act aims to improve accountability and standards in the sector by licensing security providers and establishing a Private Security Authority to supervise individuals and firms providing security services. The authority will also deal with complaints against licensees. All licensees will be issued with identity cards.

Over 100 outdated acts to be repealed

The Taoiseach, Mr Bertie Ahern TD has initiated the process that will lead to the repeal of more than 100 outdated acts dating from before 1922. Some of the legislation to be repealed has little or no relevance in the modern age. Curiosities such as the 1875 Chimney Sweepers Act or the 1846 Baths and Warehouses Act will clearly not be missed, but other acts could cause difficulties to business and add to costs. A public consultation process has been established to identify any impact that repeal of pre 1922 legislation will have on business and other interests. Legislation that remains relevant but needs updating will be identified and addressed. This work is already underway in areas such as land conveyancing and liquor licensing. The project mirrors an EU initiative to reduce the body of European law by 25% by 2005.



Outdated Acts to be repealed or reformed.

Careless driving to be added to offences attracting penalty points



Points for using mobile phone while driving

From the beginning of June 2004, drivers found guilty of careless driving will receive 5 penalty points on their licences. Drivers who receive 12 penalty points within 3 years will be disqualified from driving for 6 months. At present, penalty points are administered for speeding offences, failing to wear a seatbelt and for driving without insurance. Driving while using a hand held mobile phone will shortly join the list of offences attracting penalty points. The penalty will apply to a defined range of offences including; dangerous overtaking, failing to dip headlights and dangerous reversing. Like speeding and seatbelt related penalty points, the 5 points for careless driving can be issued at the roadside, without going to the court to secure a conviction. More than 140,000 motorists have received penalty points so far.

Lifejackets now compulsory on Irish Waters

New regulations mean that from June 1st 2004, wearing of life jackets or personal flotation devices is now compulsory on board any boat of 7 metres (23 feet) or less in Irish waters. Sufficient lifejackets or similar flotation devices for every person on board must also be carried on every vessel, regardless of size. Children under 16 years of age must wear a lifejacket at all times while on deck of a vessel underway. A draft Code of Practice for the Safe Operation of Recreational Craft was also published. Part A of the

code covers the compulsory legislative provisions relating to leisure craft and part B covers specific guidelines relating to sailing craft, motor craft, jet skis etc.

Revised guidelines on rural planning

New draft planning guidelines on rural housing have been published by Mr Martin Cullen TD, Minister for the Environment, Heritage and Local Government. These guidelines are designed to help achieve the following objectives:

To facilitate planning permission for housing for local people, people with roots in rural areas and people who contribute to local communities.

In areas where demand for rural housing is being driven by commuters to nearby urban areas, development of this type should be concentrated in areas zoned for residential development, while facilitating housing for people who are part of the existing community.

Areas suffering from population decline will be favoured, and traditional forms of housing development will be respected.

A balance should be struck between accommodating applications for one-off rural houses and encouraging development in towns and villages. Developments in rural areas should be designed to integrate with its environment.

Press Council proposals to come before Cabinet

Mr Michael McDowell, Minister for Justice, Equality and Law Reform is to bring proposals for the establishment of an independent Press Council to the Cabinet in the autumn. Establishing a Press Council was proposed by the Law Reform Commission as long ago as 1994 but the Director of Public Prosecution's (DPP) admission that 8 trials had to be postponed at very short notice in the past year due to publication of prejudicial material. The DPP, Mr James Hamilton, also said that certain sensationalist reporting which

falls short of contempt of court points to the need for a Press Council. Mr McDowell said that the Press Council "will not be a Government-appointed, control of the media device. It will be an independent body which will uphold standards in journalism, and which will have some teeth in so doing."

IRMA threatens action against illegal music downloading



IRMA may prosecute for illegal music downloads

The Irish Record Music Association (IRMA) is considering joining the growing ranks of European and North American music rights associations who have taken legal action against consumers downloading music from the internet. A recent report commissioned by IRMA showed that more than 250,000 Irish people had illegally downloaded music files from the Internet. In an environment of declining music sales, music associations in the US, Canada, Italy and Denmark have already commenced proceedings against consumers accused of sharing music files.

The Irish Copyright and Related Rights Act 2000 would allow IRMA to prosecute any person infringing the rights of the music's copyright owner (generally record companies). Fines of up to €1,900 or up to 12 months in prison could be imposed on anyone convicted. IRMA claims that 60% of Irish 15 to 24 yr olds have downloaded music files. Many of the most prolific downloaders are young middle-class males, using home computers. Parents, employers and educators should be aware of the consequences.

Holidays and Travelling Overseas

Summer has finally arrived, and many people will be heading off on holiday in the sun. Holidays can be among the happiest times of our lives, but if something goes wrong far from home, the effects can be much more traumatic than a similar incident on familiar territory. Lost luggage, delayed connections, accident or illness; these can all contribute to the spoiling of what should have been a well-deserved break. Although the law provides remedies in many instances where holidays and travel cause distress, all passengers should ensure that they have adequate insurance cover for every trip as compensation limits provided for by legislation are often very low.

Airline Compensation for Overbooking

EU legislation has given airline passengers rights to redress in certain situations. If an intending passenger, in possession of a valid ticket and a confirmed reservation for a flight turns up within the specified check-in times and is prevented from travelling because the airline has overbooked, the passenger is entitled to the following (minimum) compensation:

€150 in the case of a flight of less than 3,500 km (reduced to €75 if the delay caused is less than two hours)

€300 in the case of a flight of more than 3,500 km (reduced to €75 if the delay caused is less than four hours)

Passengers may elect to accept compensation in the form of vouchers, or similar payments other than cash, but this is at the passenger's sole discretion and may not be insisted upon by the airline. All EU airlines must also make provision for payment of compensation in the event of an accident, including payments for immediate economic hardship compensation.

Unless the passenger advises at check in that they have a special "interest in delivery at destination" and pay any



appropriate additional charges, the airline's statutory liability for lost luggage is limited to around €17 per KG. As most airlines' standard baggage allowance is 20 KGS, it is obvious that a payment of €340 is unlikely to compensate most travellers for the loss of their luggage.

Brochure Descriptions

Under the Package Holidays & Travel Trade Act 1995, if incorrect or misleading information is published in a tour operator's brochure or advertising and the customer suffers loss or inconvenience as a result of relying on the information, then the holiday maker may be entitled to compensation for financial loss and / or consequential loss. If you have had a bad experience on holiday, let us know. Compensation could help erase the bad memories.

Illness or Accident

Strange places, unfamiliar food and the general relaxation we all experience on holiday can increase the chances of illness or accident overseas. Even a minor medical incident can quickly become traumatic in a strange environment. Good travel insurance should be taken out for every overseas trip. If you have health insurance at home, you should check with your insurer to see if it covers you for overseas treatment and find out how to avail of the

cover. The new European Health Insurance Card, available free of charge from your Regional Health Authority, entitles EU citizens travelling within the EU to the same level of emergency treatment as a citizen of the country they are visiting.

Travel Agents & Tour Operators

If you have booked your holiday with a licensed and bonded tour operator or travel agent, under the Tour Operators and Travel Agents Act 1982, in the event of the agent or operator becoming insolvent or ceasing trading, you will be entitled to a full refund of any money paid, or will be flown home if you are overseas at the time. Always check that your travel agent / tour operator is licensed and bonded.

We all cherish our holidays, but if anything goes wrong before you depart or when you are overseas, contact us immediately. We will act quickly and decisively to help redress the situation.

Whereas every effort is made to ensure that all information contained in this newsletter is accurate, it is intended as a general guide only and the information herein may not apply to your individual circumstances. Professional advice should be taken before acting or refraining from acting as a result of any information contained in this newsletter. Always consult your legal advisors first.

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