
The New Programme for Government: Implications and Opportunities

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Peter Osborne, *Consultant, Head of Knowledge Team and Head of Digital Services*



Introduction

- Welcome and outline
- The legal and legislative context
- The structure of the Government: legal implications of a change of Government
- Programme for Government: overview
- Programme for Government: review by policy area
- What next?

The Legal and Legislative Context (1)

- Constitution (*emphasis added*):
 - “The Government shall consist of not less than seven and not more than fifteen members...” (Art 28.1)
 - “The executive power of the State shall ... be exercised by or on the authority of the Government.” (Art 28.2)
 - The Government “is *the* executive, exercising the supreme executive power of the State...” (*Comyn v AG* [1950] IR 142)
 - “...on the authority of...” – the civil service and State bodies
 - “The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.” (Art 28.4.2^o)

The Legal and Legislative Context (2)

- The Government is one of the three key pillars in the separation of powers
- The Constitution doesn't set the limits of “executive power”
 - Whatever remains when legislative and judicial powers are subtracted?
- Legal character of the Government:
 - The Government is not a body corporate (although every minister is)
 - Nonetheless the Government has some type of legal personality: it is recognised in the Constitution, has a seal and can own property
 - The Government has functional continuity, like perpetual succession
 - *Legal* commitments of the Government necessarily bind subsequent Governments, but Government commitments are more likely to be in the *political* (rather than the legal) domain

The Legal and Legislative Context (3)

- Legal character of a minister
 - A corporation sole with perpetual succession, power to own property and power to sue and be sued (Ministers and Secretaries Act 1924, s2)
 - Ministers and Secretaries Acts 1924 to 2017:
 - The theory of the “corporate shell”
 - Frequent restructuring of the departments of State
 - Ministers are independent of each other in performance of their functions (*Conroy v Minister for Defence* [1934] IR679)
 - Collective responsibility of the Government for the departments of State, but individual responsibility of each minister for her / his department
 - *Carltona Principle* (also *Tang v Minister for Justice* [1996] 2 ILRM 46)
 - Important context: the Public Service Management Act 1997
 - Cabinet Handbook, section 1.2

The Legal and Legislative Context (4)

- Legal character of a minister (*cont'd*)
 - Public Service Management Act 1997, s3 and s4
 - A minister is individually responsible for those core functions of her / his department assigned under the Ministers and Secretaries Acts
 - Secretary-General of the relevant department has day-to-day responsibility for management of that department
 - Delegation
 - Ministers of State ('junior ministers')
 - Ministers and Secretaries (Amendment) (No 2) Act 1977, s 7
 - State bodies

The Legal and Legislative Context (5)

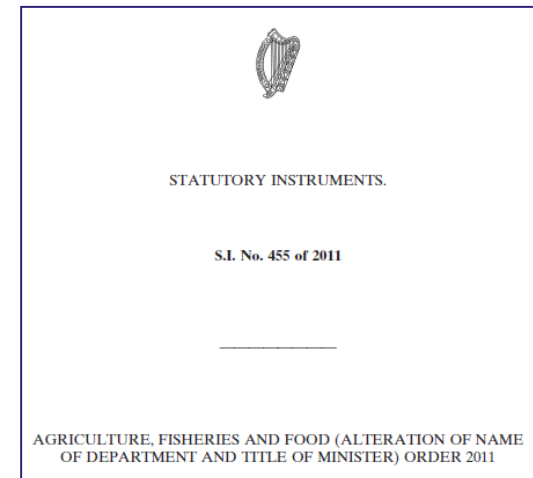
- Government structures

“The following matters shall be regulated in accordance with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the Government to be the Ministers in charge of the said Departments...” (Constitution, Art 28.12)

- Alteration of Departments’ and ministers’ names
- Transfer of Departmental administration and ministerial functions
- Delegation of ministerial functions

- Coalition Governments

- Ministerial independence (1924 Act)
- Collective responsibility (Constitution, Art 28.4.2°)
- Cabinet confidentiality (Constitution, Art 28.4.3°)



Implications: The Structure of the Government (1)

Current and Proposed Reconfigured Government Departments

- **Taoiseach**
- **Agriculture, Food and the Marine**
(to become Agriculture and the Marine)
- **Business, Enterprise and Innovation**
(to become Enterprise, Trade and Employment)
- **Children and Youth Affairs**
(to become Children, Disability, Equality and Integration)
- **Communications, Climate Action and Environment**
(to become Climate Action, Communications Networks and Transport)

Implications: The Structure of the Government (2)

Current and Proposed Reconfigured Government Departments

- **Culture, Heritage and the Gaeltacht**
(to become Media, Tourism, Arts, Culture, Sport and the Gaeltacht)
(to become Housing, Local Government and Heritage)
- **Defence**
(to become Foreign Affairs and Defence)
- **Education and Skills**
(to become Education)
- **Employment Affairs and Social Protection**
(to become Enterprise, Trade and Employment)
(to become Social Protection, Community and Rural Development and the Islands)

Implications: The Structure of the Government (3)

Current and Proposed Reconfigured Government Departments

- **Finance**
- **Foreign Affairs and Trade**
(to become Foreign Affairs and Defence)
- **Higher Education, Science and Innovation**
- **Housing, Planning and Local Government**
(to become Housing, Local Government and Heritage)
- **Justice and Equality**
(to become Justice)
(to become Children, Disability, Equality and Integration)

Implications: The Structure of the Government (4)

Current and Proposed Reconfigured Government Departments

- **Health**
- **Public Expenditure and Reform**
- **Rural and Community Development**
(*to become* Social Protection, Community and Rural Development and the Islands)
- **Transport, Tourism and Sport**
(*to become* Climate Action, Communications Networks and Transport)
(*to become* Media, Tourism, Arts, Culture, Sport and the Gaeltacht)

Programme for Government: Overview

- The ‘greening’ of everything, affecting much of:
 - how we live
 - how we work
 - how we travel
- Proposed Recovery Fund as the ‘engine’ for development in:
 - Infrastructure development
 - Reskilling and retraining
 - Supporting investment in Irish companies
- A more activist State sector generally, *eg*:
 - “Investment-led recovery”
 - Borrowing, not taxation, to fund recovery
 - NewERA: State companies to “drive new economic opportunities”
- Commitment to the 12.5% rate of corporation tax

Programme for Government: Review by Policy Area (1)

- **Finance and Financial Services**
 - Many proposals for this sector are already underway and so are merely restatements of existing policies and initiatives
 - The EU will remain the principal driver of financial services regulation. Nonetheless, there are to be some Irish initiatives
 - Senior Executive Accountability Regime
 - Investment Partnership legislation to be updated
 - Encourage the Fintech sector
 - Implement the *Ireland for Finance: Financial Services Strategy*
 - Prioritise Green Finance strategic actions that are developed in line with Sustainable Development Goals

Programme for Government: Review by Policy Area (2)

- **Finance and Financial Services** (*cont'd*)
 - Consider the introduction of a code of conduct on mortgage switching to enhance competition in the market
 - Address insurance costs:
 - regulate claims management companies and claims harvesters
 - consider changes to the Occupiers Liability Act and the Civil Liability Act (duties of care) to strengthen waivers and notices to increase protections for consumers, businesses, sporting clubs and community groups
 - consider the need for a constitutional amendment to enable the Oireachtas to establish guidelines on award levels
 - expand the National Claims Information Database to employer liability and public liability to track the level of claims

Programme for Government: Review by Policy Area (3)

- **Finance and Financial Services** (*cont'd*)
 - Mortgage lending:
 - strengthen the Mortgage-to-Rent Scheme
 - increase the availability of long-term fixed rate mortgages
 - consider State-backed mortgages for first-time buyers to support affordable home ownership
 - examine green mortgages (especially for retrofitting of homes)
 - reform personal insolvency legislation and ensure that sufficient protections are in place for mortgage-holders
 - ensure that the Code of Conduct on Mortgage Arrears has full legal effect
 - Promote the credit union movement

Programme for Government: Review by Policy Area (4)

- **Real Estate & Construction**
 - “Town Centres First” initiative
 - Review the existing management company legislation to ensure that it’s fit for purpose and acts in the best interests of residents
 - Review the Companies Act to address the practice of trading entities splitting operations between trading and property and the insolvency implications thereof
 - Reform the residential tenancies regime to provide greater protection to tenants (and a potential extension of the COVID-19 specific moratorium on the termination of tenancies)
 - Provide clarity on commercial rates for remainder of 2020 and streamline the commercial rates system post-COVID-19
 - Strengthen enforcement of the Vacant Site Levy

Programme for Government: Review by Policy Area (5)

- **Real Estate & Construction** (*cont'd*)
 - Reform the judicial review process, to come into effect upon the establishment of the Environmental and Planning Law Court
 - Reform and consolidate laws on compulsory acquisition
 - Reform the law to improve the legal remedies for home owners dealing with defects
 - Introduce a code of conduct between landlords and tenants for commercial rents
 - Significant impacts for the built environment are likely, stemming from the climate action proposals and “Green” initiatives generally
 - Introduce an independent Building Standards Regulator
 - Introduce a State-backed affordable home purchase scheme

Programme for Government: Review by Policy Area (6)

- **Climate, Energy, Transport & Infrastructure Development**
 - Proposed Recovery Fund will stimulate “infrastructure development” (housing, retrofitting, transport, other employment-intensive areas)
 - Key theme: a ‘green recovery’
 - National Retrofitting Plan (at least 500,000 homes to B2 by 2030)
 - Green Finance (EU-led)
 - Carbon tax rising to €100 per tonne by 2030
 - A decarbonised economy by 2050
 - Sharp focus on development of renewable energy (particularly off-shore)
 - Deliver at least 70% renewable electricity by 2030
 - Finalise and publish the Wind Energy Development Guidelines
 - Introduce a Climate Action (Amendment) Bill 2020 promptly
 - A 7% per annum reduction in overall greenhouse gas emissions from 2021 to 2030 (a 51% reduction over the decade)

Programme for Government: Review by Policy Area (7)

- **Climate, Energy, Transport & Infrastructure Development** (*cont'd*)
 - Enact the Marine Planning and Development Bill promptly (potential for 30GW+ of offshore floating wind power in deeper waters in the Atlantic)
 - No new licences for exploration or extraction of gas (oil already banned)
 - Reform and consolidate laws on compulsory acquisition
 - Key role for the Land Development Agency
 - Grant CPO powers to the LDA
 - Assemble strategic sites in urban areas and ensure the sustainable development of social and affordable homes for rent and purchase
 - Review the National Development Plan ASAP (transport projects especially)
 - Review road traffic policy and legislation to prioritise the safety of walking and cycling

Programme for Government: Review by Policy Area (8)

- **Climate, Energy, Transport & Infrastructure Development**
(cont'd)
 - Expand cycling infrastructure
 - Legislate for e-scooters and e-bikes
 - Expand the statutory remit of the National Transport Authority
 - “Park and Ride” strategy for each of the five principal cities
 - Scale up district heating pilot projects
 - Introduce stricter rules for approval of any project for entry on the EU list of Projects of Common Interest
 - ‘Use it or lose it’ condition for all planning permissions of 10+ units
 - End the Strategic Housing Development regime
 - Devolve more powers to local authorities

Programme for Government: Review by Policy Area (9)

- **Employment Law and Pensions**
 - Remote Working: encouraged generally (including possible tax incentives) and a target of 20% of time is suggested for the public sector
 - Reskilling: a major reskilling programme is proposed for the unemployed
 - Review of the law on redundancies and corporate liquidation to ensure appropriate protection of workers' interests
 - No increases in income tax or USC rates but PRSI rates may rise in order to Aspiration to move to a living wage over the lifetime of the Government
 - Possible negotiation of a new public pay deal with the public sector unions

Programme for Government: Review by Policy Area (10)

- **Employment Law and Pensions** (*cont'd*)
 - Equality: legislation is promised on adoptive leave and benefit for male same-sex adoptive couples and to introduce a new ground of prohibited discrimination (based on socio-economic disadvantaged status)
 - Work-life balance: a possible “right to disconnect” and an extension to paid parental leave
 - Pensions: any increase in the State pension age would first have to be considered by a Commission on Pensions and possible auto-enrolment for pensions (with an opt-out)

Programme for Government: Review by Policy Area (11)

- **Public Administration and Regulation**
 - Enable regulatory bodies (such as ComReg, the Central Bank and the Competition and Consumer Protection Commission (“CCPC”)) to make greater use of administrative penalties to sanction rule-breakers
 - Give the CCPC effective enforcement powers to punish and deter anti-competitive conduct
 - Move away from the current self-regulating regime for advertising and require the CCPC to take a more active enforcement role
 - Establish a Gambling Regulator, to regulate advertising, gambling websites and gambling apps
 - Restructured Cabinet committees will meet at least every four weeks (Government Co-Ordination; Economic Recovery and Investment; Housing; Environment and Climate Change; Brexit and Northern Ireland (will meet fortnightly); etc)

Programme for Government: Review by Policy Area (12)

- **Regulatory and Law Enforcement**
 - Establish the ODCE as a stand-alone statutory body
 - Introduce and implement new anti-corruption and anti-fraud structures, informed by the forthcoming Hamilton Review
 - Legislate to provide for preliminary trial hearings to expedite the administration of justice in white-collar crime cases
 - Amend the Criminal Justice (Corruption Offences) Act 2018 to make prosecutions more manageable and efficient
 - Extend the lobbying register to encompass the lobbying of senior officials in bodies (like the Central Bank, ComReg, NTA and HSE) that have significant policy-making or development functions

Programme for Government: Review by Policy Area (13)

- **Litigation and Dispute-Resolution**
 - Courts reform, in respect of environmental litigation especially (establish a new Planning and Environmental Law Court, managed by specialist judges and on the same basis as the existing Commercial Court model)
 - Reduce insurance costs: reform personal injuries law, *eg* award size, fraud, reform of law on perjury, occupier's liability, etc
 - Review and reform defamation laws
 - Clarify and strengthen contempt of court sanctions for violations on social media
 - Modernise the law on the administration of oaths in judicial and other proceedings (execution remotely?)
 - Reform the personal insolvency system

Programme for Government: Review by Policy Area (14)

- **Corporate**

- Review the Companies Act to address the practice of trading entities splitting operations between trading and property and the insolvency implications thereof
- Review the Companies Act to simplify and improve receivership, examinership and liquidation laws in response to the COVID-19 crisis (to include a review of protection periods)
- Review the regulation of receivers to ensure accountability and transparency on issues such as fees, asset sales, the overall conduct of the receivership, and treat all parties involved fairly
- Establish the Office of the Director of Corporate Enforcement (ODCE) as a stand-alone statutory body

Programme for Government: Review by Policy Area (15)

- **Corporate** (*cont'd*)
 - Examine the legal provision that pertains to any sale to a connected party following the insolvency of a company including who can object and the allowable grounds of an objection
 - Review the existing management company legislation to ensure that it's fit for purpose and acts in the best interests of residents
 - Update legislation relating to the Charities Regulator
 - Review whether legal provisions surrounding collective redundancies and the liquidation of companies effectively protect the rights of workers

Programme for Government: Review by Policy Area (16)

- **Digital Services & Innovation; Information Technology**
 - Through a National Digital Strategy, develop Ireland's leadership in digital technologies (including cloud computing, data analytics, blockchain, 'Internet of Things' and AI)
 - Enact the Online Safety and Media Regulation Bill
 - Require platforms to have takedown measures that are timely and effective
 - Require online platforms to set out the steps they will take to keep their users safe online and to build safety into the design of their platforms
 - Establish an Online Safety Commissioner

Programme for Government: Review by Policy Area (17)

- **Digital Services & Innovation; Information Technology** (*cont'd*)
 - Replace the Broadcasting Authority of Ireland (“BAI”) with a new Media and Online Safety Commission
 - Improve protections against hacking, cybercrime, crypto-jacking, ‘hacktivism’, and cyber espionage (including building the capacity of the of the National Centre for Cyber Security)
 - Drive digital transformation in the public service, with greater integration of digital services
 - Direct the Office of Government Procurement to support the adoption of new technologies through new public service frameworks

What Next?

- Government Legislation Programme
 - Policy-driven proposals
 - ‘House-keeping’
- Much will be influenced or determined by politics rather than law
- As regards the conduct of *any* coalition Government (not merely this one), recall:
 - Ministerial independence (1924 Act)
 - Collective responsibility (Constitution, Art 28.4.2°)
 - “Ministers must at all times support Government decisions in public debate as a responsibility of office” (Cabinet Handbook, section 1.2)
 - Cabinet confidentiality (Constitution, Art 28.4.3°)
- Let’s not forget Brexit...

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