

Revenue Legislation Services

GUIDE TO THE LEGISLATIVE PROCESS

May 2016

Revenue



Cáin agus Custaim na hÉireann
Irish Tax and Customs

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FOREWORD

Revenue Legislation Services (RLS) has undergone significant transformation to its systems and practices since its establishment in 2004, not least in regard to the legislative process. The aim of the new edition is to accurately reflect these changes in a manner that is more workable and accessible for all involved.

This new edition provides the roadmap for RLS engagement with the conduct of the Finance Bill following full implementation of the new EU Budgetary Semester. This has dramatically altered budget timelines. More importantly, it has brought to the fore the increasing importance of long-term planning and collaborative consultation by RLS in fulfilling the need for more effective legislative initiatives. Good workable legislation sets the groundwork on which all our other activities are conditioned.

I would like to extend special appreciation for the generous advices of our legislative partners in Department of Finance, Office of the Parliamentary Counsel, and the Bills Office in the Houses of the Oireachtas, who continue to work closely with RLS in devising new methodologies and solutions as an ongoing shared enterprise.

I would also like to acknowledge the commitment of all RLS staff in maximising the opportunity of the many changes of recent years and where a readiness to innovate and to respond effectively to new developments remains the key to legislative success.

Chairman

Dublin Castle

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Chapter 1

Outline of the Legislative Process and the Offices of the State

Outline of the Legislative Process and the Offices of the State

Ireland has been an independent parliamentary democracy since 1922. It has a written Constitution – the current one dates from 1937 and has 19 separate Acts amending it – and since 1 January 1973 the State has been a member of the EU. The head of State is the President but this Office is non-executive in nature and the President, with few exceptions, is required under the Constitution to act on the advice of the Government.

The Constitution is the basic law of the land. It outlines the structure of Government and enumerates the rights of individuals. The Constitution binds the system but is, in itself, in turn, interpreted by the Courts. It can only be amended if a Bill to amend it has been passed by both houses of Parliament and is subsequently approved of by a simple majority of the people voting at a referendum.

There are three main branches of Government, each independent but intrinsically interdependent, as follows:

Legislature (Oireachtas) – this is the National Parliament and consists of the President and two houses, the Lower House - Dáil Éireann (the House of directly elected representatives of the people) and the Upper House - Seanad Éireann (Senate).

Executive (Government) – this is the Administration of the day with executive responsibility for the running of the State through all Government Departments and other agencies.

Judiciary (the Courts) – these are independent in the exercise of judicial functions and are subject only to the Constitution and the law (including EU Law). Fundamental rights are set out in the Constitution and, in addition, the Courts have identified other Constitutional rights not expressly specified in the Constitution. In interpreting and applying any statute or rule of law the Courts, in so far as is possible and subject to the rules of interpretation and application, are required to do so in a manner compatible with the State's obligations under the European Convention on Human Rights (see European Convention on Human Rights Act 2003).

What is Legislation?

Legislation is the product of the law-making process of the State. The principal characteristic of legislation is that it reduces rules to a written and fixed verbal form. In Ireland, subject to the obligations of EU Membership, the Oireachtas has the sole and exclusive power to make laws for the State.

Legislation falls into two categories:

1. **Primary Legislation** - consisting of Acts of the Oireachtas
2. **Secondary Legislation** - legal measures the making of which are delegated by the Oireachtas (in primary legislation) on another body (e.g. Minister for Finance, Revenue Commissioners). Because of the role of the Oireachtas (Dáil, Seanad and President) in the Constitution, there are strict limitations as to what can be delegated by an Act. There is a body of case law relating to this matter but basically where it is appropriate for an Act to delegate to another authority, the general principles and policies governing the operation of the delegation have to be set out in the primary legislation. In some cases (e.g. making fees orders) the principles and policies may be very simple and straightforward. In other cases they can be detailed and, by their nature, restrictive of what can be done constitutionally by way of secondary legislation.

Before a Government Bill is initiated in the Dáil or Seanad its contents must first secure the formal approval of the Government. In advance of this a process of consultation with Government Departments and other interested groups will usually have taken place and occasionally the Government will publish a Green Paper which will be a discussion document setting out its ideas and inviting responses and suggestions. Arising out of this and indeed other considerations on the need for a new Bill, a proposal containing what is known as the 'Heads of the Bill' will be presented to Government with the aim of securing official approval to proceed with formal drafting of the Bill.

Office of the Parliamentary Counsel

Bills must be drafted in a specific manner in what is often a complex and detailed format. This specialised work is undertaken on behalf of Departments by the Office of the Parliamentary Counsel to the Government (OPC). The OPC is a constituent part of the Attorney General's Office (AG). It is important to note the vital role of the OPC in the entire legislative function. The Cabinet Handbook, which deals with Cabinet procedure, provides that no Government Bill can be initiated in either the Dáil or Seanad unless it has Cabinet approval. A draft Bill will not be placed on the agenda for Cabinet unless it has been drafted and cleared by the OPC.

With regard to Revenue, the legislative process differs very considerably from that prevailing in Departments. The Cabinet Handbook requirement for the preliminary clearance by Cabinet of the Scheme of a Bill with Heads does not apply to the Finance Bill or other money bills (as defined by Article 22.1 of the Constitution). Revenue is unique in that, with its expertise, it can provide provisions to an extremely high standard which in many instances require minimal, if any, changes by the OPC. The reasons for this will be expanded upon in the next Chapter; however, suffice to say that taxation is a highly technical subject which demands the skills and experience which are most readily available in Revenue. It should be noted, however, that the drafting of all tax legislation must nonetheless secure the official approval of the OPC.

A more comprehensive look at work of the OPC is contained in Chapter 4.

Stages of a Bill

The Legislative Process is about converting a political commitment or decision into an Act of the Oireachtas. Once the Bill has been drafted and initiated it will proceed through the Oireachtas undergoing progressive refinement, adjustments and amendments, but all the while strictly following a number of well-defined and long-established stages before it is enacted into law.

There are five principal stages in the legislative process, as follows:

First Stage: the permission of the House is obtained to introduce the Bill i.e. to have it printed and circulated. This is not generally required for Government Bills which are printed and circulated following presentation to the Ceann Comhairle or Cathaoirleach. As a general rule Bills may be initiated in either the Dáil or the Seanad. However all Money Bills dealing with taxation and expenditure (such as the Finance Bill), and also Bills to amend the Constitution, can be initiated only in the Dáil. It is for the Ceann Comhairle (speaker of the Dáil) to certify if a Bill is a Money Bill (Article 22.2 of the Constitution). The certification is made prior to publication of the Bill concerned.

Second Stage: this allows the principal provisions of the Bill to be considered and debated on the general question of whether the law should be amended as broadly envisaged. The House discusses what the Bill contains and also what might be relevantly included.

Third (Committee) Stage: the general idea of the Bill having been accepted, this allows detailed section-by-section examination and improvement of what is proposed. Modification of the proposed Bill, consistent with its general principles, can be made by way of formal amendments. In the Dail, Committee Stage may be conducted by way of debate in the Dail chamber or, more commonly, before a sub-Committee. Committee Stage in the Seanad is always conducted in the House.

Fourth (Report) Stage: a review of the Bill as amended at the Committee Stage. Consideration is restricted to amendments tabled that arise only from proceedings at the Committee Stage or amendments of a drafting nature.

Fifth (Final) Stage: this completes the process in the House, whether the Bill, in its current form, would constitute good law. The House considers the question 'that the Bill do now pass'.

When the Bill has passed all stages in the first House, it is then sent to the other House - in the case of a Money Bill from the Dáil to the Seanad. The Second, Third, Fourth and Fifth stages of the Bill (as passed by the first House) are repeated in the other House. However in relation to Money Bills the Seanad has only the capacity to make recommendations on what is proposed and is not empowered to make amendments as such to the Bill. When a Bill has passed through the second House (the Seanad in the case of a Money Bill) a message is sent to the first House. Specific provisions are provided for by the Constitution in respect of a Money Bill not accepted by the Seanad as passed by the Dáil (see Article 23 of Constitution).

Enactment

As a general rule, once a Bill has been passed by both Houses the Taoiseach

presents a vellum copy, prepared by the Bills Office, to the President for signing. This enacts it into law and the signed text is enrolled in the Office of the Registrar of the Supreme Court. A Bill to amend the Constitution and passed by both Houses cannot be presented to the President for signature unless it has been approved by a simple majority of the people voting at a referendum.

The Bills Office

The Bills Office operates under the aegis of the Houses of the Oireachtas and it provides the executive secretariat responsible for the business of progressing a bill through all stages of the legislative process. It retains special expertise in the role of assisting the Ceann Comhairle and Committee Chair in ensuring that all the requirements of Standing Orders are properly fulfilled at all stages of a Bill's progress through the Dáil. This involves detailed scheduling of the bill in the context of the extremely intense (always) legislative activity of the Oireachtas, and general good management of the conduct of the bill and its statutory requirements at each stage. It also includes such elements as proofreading and print software applications, right up to finally preparing the vellum copy of a new Act ready for signature by the President.

In a similar function to the Bills Office, the Seanad Office deals with issues of order and prepares amendments in respect of Bills before the Seanad.

The Bills Office is based in Kildare Street directly across the road from the Dáil. It can be contacted at publicbills@oireachtas.ie

Standing Orders of Dáil Éireann

The Standing Orders, the most recent edition published in 2011, comprises the rules and procedures of Dáil Éireann. These govern the everyday workings of the Dáil and cover various topics including Sittings of the Dáil, the Order Paper, Parliamentary Questions, Rules of Debate, Committees, and Bills etc. The main provisions governing Bills are set out in Standing Orders 116 to 146. These Orders should be read because they detail such matters as the various stages a Bill has to go through in order to become an Act, the rules governing amendments and, most importantly, the procedures governing 'Bills involving the imposition of charges upon the people' or on the Revenue.

Standing Orders of Dáil Éireann, also those for Seanad Éireann, are available online at www.oireachtas.ie and www.irisoifigiuil.ie/

Further Information on the Legislative Process

On the pre-legislation process, the Cabinet Handbook (current edition 2007) should be consulted. It is available online at www.Oireachtas.ie. This Handbook is an internal Government (Cabinet) guide for Ministers. Its purpose is to assist Ministers and officials in the preparation of matters to be dealt with at Government meetings, in accordance with the principles of collective responsibility. It also offers guidance on a number of ancillary matters. The guidelines in the Handbook are subject to change by the Government of the day as they see appropriate. On occasion the Government may decide that the guidelines (in whole or in part) do not apply in particular circumstances.

The Cabinet Handbook details the procedures and instructions for the preparation and submission of memoranda for Government. It also includes chapters on proposals for legislation (Chapter 4) and Orders (Chapter 5). It explains the process (not applicable to Money Bills) for the circulation by a Department of the draft scheme of a Bill to other Departments (including the Attorney General) for observations before Cabinet approval that the scheme of a Bill be sent to the Attorney General for drafting by the OPC. The Handbook also covers approval for publication by the Government of a Bill as drafted by the OPC. Guidelines (prepared by the OPC as part of the Attorney General's Office) for Departments in respect of the preparation of the General Scheme of a Bill are set out in Appendix II to the Handbook.

The Department of Finance provides a certificate course in tax policy development, currently run on its behalf by the Institute of Tax.

<http://www.taxireland.ie/default.aspx>

<http://taxinstitute.ie/>

It is important to note that a huge volume of legislative information is available online. For Irish legislation all the legislative material relevant to current legislative administration is fully accessible on the www.Oireachtas.ie website. The Attorney General's website provides a comprehensive database of post-1922 legislation (see: www.irishstatutebook.ie). It also contains a Chronological Table of the Statutes showing post-1922 amendments to statutes. Another very useful online source is the British and Irish public Legal Information site at www.bailii.org.co which provides comprehensive up to date legislative materials of both jurisdictions.

Chapter 2

Revenue and Legislation

Revenue and Legislation

The task of producing legislation within Revenue is undertaken by the Revenue Legislation Services (RLS) which embodies an experienced and skilled legislative capability across all taxheads (Direct Taxes (Personal and Business) such as Income Tax, Corporation Tax, Local Property Tax, Capital Gains Tax, Capital Acquisitions Tax and Stamp Duty), and Indirect Taxes (such as Value-Added Tax, Excises and Customs).

RLS has a unique role in the formulation of complex tax and duty legislation. This is largely due to Revenue's core function of collecting taxes. Revenue is also involved in many other related aspects of the administration of government. Whilst matters such as income tax are direct forms of taxation over which Revenue works with the Department of Finance, RLS also works closely with other Government Departments on issues such as, for example, environmental and industrial policy that may have tax implications. Whereas most Government Departments have their legislation drafted by the Office of the Parliamentary Counsel (OPC) by supplying Heads of a Bill which involve considerable input by the OPC in drafting, Revenue supplies drafts in as near complete form as possible to the OPC. There are a number of specific reasons for this:

- (i) Taxation is a specialised subject requiring high standards of skill and experience sometimes unique to Revenue itself.
- (ii) Finance Bills are money bills governed by legislative imperatives under the Constitution setting strict timelines for enactment. This makes them very different from most other Bills that may be rescheduled at any time for any number of reasons.
- (iii) The legislative timescale within which a Finance Bill has to be enacted dictates that it must be produced and passed into law within four months of the passing of Budget Day Financial Resolutions.
- (iv) Under Regulation 473/2013 of the European Parliament and of the Council (one of the two-pack), the draft budget for the central government for the coming year must be made public not later than 15 October each year (Article 4.2) and the budget for the central government must be adopted or fixed upon by the end of the year (Article 4.3). This means that the Finance Act must be passed before the end of the year.

A small number of provisions in the Finance Bill each year are drafted by the OPC directly on instructions from the Department of Finance. These are normally drafted by the OPC in the same manner as for any other bill. The dominant element of the workload of RLS Divisions each year is dedicated to the production of the Finance Bill on behalf of the Department of Finance. This Bill gives effect to the taxation provisions of the Budget and the Government's taxation programme for the year. Important legal instruments which impact on the Finance Bill are The Constitution, Provisional Collection of Taxes Act 1927, Interpretation Act 2005, and the Fiscal Responsibility Act 2012.

The Constitution of Ireland 1937

This makes specific reference to the legislative process of the State in relation to Finance Bills – these are classified as ‘Money Bills’. The relevant Articles are:

- Article 20** Stating that a Money Bill may only be initiated in Dáil Éireann and may not be amended by Seanad Éireann.
- Article 21** Stating that, if a Money Bill has not been returned by Seanad Éireann to the Dáil within 21 days, then it shall be deemed to have been passed by both Houses of the Oireachtas.
- Article 22** Defining what a Money Bill is and providing that the Ceann Comhairle of Dáil Éireann has the function of deciding whether or not a Bill constitutes a Money Bill.

The Article reads as follows:

- 1° A Money Bill means a Bill which contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; matters subordinate and incidental to these matters or any of them.
- 2° In this definition the expressions “taxation”, “public money” and “loan” respectively do not include any taxation money or loan raised by local authorities or bodies for local purposes.

- Article 25** Providing for the signing of Bills into law by the President.

Provisional Collection of Taxes Act 1927

This Act forms another cornerstone to the legislative process as it affects RLS. Its original ‘Long Title’ explains its content:

‘An Act to give statutory effect for a limited period to resolutions of the committee on finance of Dáil Éireann imposing, renewing, varying, or abolishing taxation, and to make provision with respect to payments, deductions, assessments, charges, and other things made or done on account of any temporary tax in anticipation of the renewal of the tax by the Oireachtas.’

The Act makes ‘limited period’ provision for the budgetary mechanism known as a **‘Financial Resolution’ (FR)**, which is, in effect, temporary legislation. On Budget night FRs may be initiated by the Government and passed by the Dáil in order to bring a taxation measure into immediate effect (for example, to increase the excise duties on such products as tobacco, alcohol and mineral oils).

Please note, the Act was amended in Appropriation Act 1991. This includes a provision in section 2 of that Act to clarify the time limits governing the period in which a Financial Resolution is in force. This matter is dealt with in greater detail in Chapter 6.

Interpretation Act 2005

The Interpretation Act 2005 came into operation on 1 January 2006. Subject to the saving provisions in section 3, it repeals the previous Interpretation Acts which relate to statute law, including the Interpretation Act 1937.

The Act applies to all Acts of the Oireachtas and makes provision for ‘the interpretation and application of Acts of the Oireachtas and of Statutory Instruments made under such Acts.’ Amongst other matters, it provides guidance with regard to the following matters:

- citation of Acts of the Oireachtas,
- commencement of Acts and instruments,
- certain general rules of construction of particular words and expressions. This is helpful on such matters as the meaning of the word “person”, the use of the singular and plural in Acts, the significance (or lack of significance) of marginal notes, etc.,
- effect of repeals and revocations,
- interpretation of particular expressions and words. This is set out in the Schedule to the Act.

Fiscal Responsibility Act 2012

The Fiscal Responsibility Act 2012 came into effect in December 2012 as part of a major program of budgetary reform introduced under the ‘Troika’ EU/IMF agreement 2011. It sets out a framework for devising and implementing budgetary rules that are consistent with the broad objectives of the EU Stability and Growth Pact. Under the Act, the Irish Fiscal Council was established as an autonomous statutory agency assigned the role of providing independent assessments of economic policies and forecasts produced by the Department of Finance. The essential budgetary rule requires that the Government’s budget is in surplus balance, or is moving at a satisfactory pace towards that position. The implications of the Fiscal Responsibility Act as it affects the Finance Bill legislative process is considered in greater detail in Chapter 3.

Chapter 3

The Formation of Taxation Legislation

The Formation of Taxation Legislation

This Chapter briefly sets out some of the many strands of influence that come to bear continuously on the evolution of taxation policy and the formation of taxation legislation which reflect themselves most clearly in the decisions on Budget Day leading on to the Finance Bill. This will be done from two points of view: Firstly, the processes within Department of Finance and Revenue Commissioners which may influence the formation of tax legislation. Secondly, the broader political environment in which tax policy is devised, although it is essential to understand both are intrinsically interrelated.

Department of Finance

It is important at all times for RLS to understand that the Finance Bill belongs to the Department of Finance as a primary element of their legislative function. It is their bill. The Tax Policy Division within the Department of Finance has the job of undertaking the process and it is largely by way of contact with this division that most communications with RLS on the Finance Bill are conducted. The division has its own internal procedures around its administration of the bill which operate independently of RLS. It has a dedicated submissions tool standardising format and tracking at each stage leading to the point whereby a proposal is either approved or disapproved by the Minister for consideration by Cabinet. As outlined in Chapter 1, Revenue provides direct support to this process, primarily by way of the drafting of specialised aspects of the taxation code, but also in the form of statistical briefing and other advices on the general operation and conduct of the taxation system.

Tax Strategy Group (TSG)

The TSG is an Inter-Departmental committee established for the purpose of consolidating high level consideration of tax policy proposals. It is set up and chaired by Department of Finance with membership comprising of senior officials and advisors from Revenue, Department of An Taoiseach, Department of Jobs, Enterprise & Innovation, Department of Social Protection and Department of Public Expenditure and Reform. Other Government advisors may be invited to attend the discussion on certain proposals as appropriate. The TSG meets in the period leading up to the Budget to consider papers on various tax and social welfare options, and/or to evaluate more broad-based tax policy initiatives. The outcome of the Group's discussions may inform the Budget decision-making process and in that way helps shape the direction of taxation policy. Further details about the TSG and TSG papers are published on the Finance website and can be worth looking at to gain a measure of the policy approaches characteristic of

this process.

Development of tax policy proposals within RLS

Many tax policy initiatives originate from within Revenue itself. As a natural element of its everyday work, branches within RLS may undertake the preparation of papers outlining policy options on the organisation, methodology and conduct of the taxation system. Such papers can form the basis of separate policy proposals in their own right and/or contribute to a wider discussion on the dimensions of tax policy in other fora (such as TSG). It is not uncommon for this work to lead directly to the creation of concrete decisions to legislate accordingly in the Finance Bill or other such appropriate legislative vehicle.

How RLS undertakes the preparation of such policy papers is dynamic within the Revenue. That is to say, it is oftentimes wholly organic within the organisation, with issues arising from within the real-time experience of the operation of the taxation system by Revenue itself. Its interpretative and advisory role on behalf of all other parts of Revenue means that it is directly linked-in to the everyday operational conduct of the taxation system. An example of this is the work of the Revenue's Regional Technical Services (RTS) which brings directly to RLS a critical source of information on the interpretation of existing legislation - it tells RLS what is happening in the day to day application of taxation and it identifies areas which may require legislative remedy. This gives RLS unique insight into the potential to actually implement tax policy proposals – their 'implementability'. Similarly, the relationship RLS enjoys with all other divisions in Revenue is a vital element in how it is poised to engage in an effective consideration of priorities for the development of tax policy. This is particularly important in regard to its relationship with Revenue Planning Division and Revenue Large Cases Division. These divisions are increasingly part of the formal consultative arrangements being devised within RLS to supplement its policy making resources, for example those arising from pre-legislative scrutiny commitments of EU Fiscal management.

Revenue Statistics & Economic Research Branch provides yet another vital internal source of information on the conduct of the taxation system. This branch prepares a wide range of statistical data including forecasting, monitoring and ongoing analysis of tax and duties throughout the year. In addition, in the immediate period prior to the Budget, it provides the TSG and Department of Finance with a ready-reckoner to calculate the probable revenue impact of key tax variables. These figures may have a direct influence on any decisions affecting changes to tax policy.

By way of regular continuous dialogue between RLS and other Revenue areas responsible for the comprehensive monitoring of the conduct of the taxation system, RLS is in pole position to identify opportunities for legislative change, be it by way of administrative/regulatory correction and/or the pursuit of large scale legislative reform. In each instance, RLS substantiates proposals for submission to Finance on the basis of coherent and detailed operational information. Finance understand this Revenue role as it feeds into their own considerations and always maintain a high regard for the capacity of RLS to provide this level of support to its own vital responsibilities.

Changes to the Budget Process since 2008

A number of reforms to the Budget Process were already under way from 2007 even before the banking and economic crisis of 2008. This included a move away from what was known as ‘the estimates process’, (a traditional method of publishing abridged projected figures in the period leading up to the Budget without regard to wider tax implications). In the new system all spending and taxation decisions are announced in a unified manner, on the same day (Budget Day): how much the government is spending, how much it is raising in tax, and how much it may need to borrow. This unified form of presentation establishes a clear and direct connection between revenue and spending and it facilitates more effective planning and decision-making.

Subsequent to the 2008 banking and economic crisis and the eventual entry of Ireland into the EU/IMF/World Bank Bailout Program in 2010, significant further reforms were introduced to the structures influencing fiscal and budgetary policy, notably by way of the Fiscal Responsibility Act 2012. This included proposals in regard to the EU Budgetary Framework which now directly impacts the management and administration of the Budget and Finance Bill.

The EU Semester Process

The European Semester is the new budgetary framework for economic management and surveillance which Ireland participated fully in for the first time in 2014. Under this budgetary framework, there are two major economic and fiscal policy documents annually – the Stability Programme Update (SPU) (in mid to late April), and the Budget (which must take place on or before October 15th). The SPU forms the basis of what is often referred to as the ‘Spring Statement’ of the budgetary disposition of the government. Both the SPU and the Budget present medium-term macroeconomic and fiscal projections, and are part of a whole-year budgetary cycle designed to reflect the political priorities of the Government and the recommendations made under the European Semester. Briefly, following the publication of the Budget in October, Finance Bill legislation to implement new revenue and expenditure measures must be passed into law before 31 December of that year in time to commence 1 January the following year.

The EU Semester process is kick-started by the Commission’s publication of the Annual Growth Survey. This identifies economic priorities for Member States on matters such as growth friendly fiscal consolidation, restoring normal lending to the economy and tackling unemployment. The process then moves onto a country specific phase. Member States must submit their Stability Convergence Programme Update¹ (outlining fiscal policies) and their National Reform Programme (outlining structural reforms) to the Commission in April. After consideration, Commission recommendations follow concerning a wide range of policy areas and these provide specific, tailored guidance to each recipient Member State on how to achieve sound public finances and on what structural reforms should be implemented to achieve smart sustainable growth.

¹ Euro area Member States submit ‘Stability Programmes’. Member States that have not adopted the euro submit ‘Convergence Programmes’; which include additional information about monetary policies.

The objective is to identify trends which could lead to ‘booms and busts’ and to help in deciding the appropriate policy reactions, including both preventive and corrective options.

Budget Plan

Under the new semester, annually, on or before 15th October, the Minister for Finance and Minister for Public Expenditure and Reform jointly present their annual Budget Statement and Expenditure Report to the Dáil. This sets out the Government’s taxation policy, expenditure decisions and budgetary targets for the upcoming year, which must be in compliance with EU fiscal rules. The Budget also sets out the updated economic and fiscal projections for the subsequent three years.

Following the passage of Regulation (EU) 473/2013, a draft budgetary plan containing an agreed harmonised set of information is included in the budgetary material.

In April, the Stability Programme Update is published setting out fiscal policy together with the economic and budgetary performance and outlook for the Irish economy over the medium term. It provides the first formal opportunity for updates to the economic and fiscal forecasts since the last Budget, and sets out the medium-term fiscal strategy.

Updated macroeconomic forecasts for the current and following three years are submitted to the Irish Fiscal Advisory Council for their independent assessment. These forecasts are subsequently used in preparing the budgetary forecasts for the SPU as well as being key determinants of the level of fiscal adjustment required.

In July, the Minister for Finance prepares a confidential macro-fiscal update for the Government, updating the forecasts in the Stability Programme, if appropriate, which have implications for the Budget. Macroeconomic and budgetary forecasts are monitored and revised constantly for the purposes of fiscal planning.

In September, the Department of Public Expenditure and Reform holds detailed discussions with Departments on their proposed expenditure allocations for the following three years, with particular regard to the upcoming year and taking account of the expenditure ceilings.

Also in September, the Tax Strategy Group (TSG), as mentioned above, meets to complete its deliberations. Following Government approval, the White Paper on Receipts and Expenditure containing Estimates of the Receipts and Estimates of the Expenditure of the State for the financial year is published on the weekend before the annual Budget, as per Article 28.4.4 of the Constitution. This material is prepared on a no-policy change basis, prior to the impact of the forthcoming Budget measures. It should be noted that the Cabinet Handbook specifies that policy decisions being submitted to Government must set out the impact of the proposals in a number of areas including gender equality, persons experiencing or at risk of poverty or social exclusion, people with disabilities and rural communities. Furthermore, the State and its bodies must take the provisions of equality legislation into account in the development and delivery of policies and services.

In early October, taking account of discussions with Departments, the TSG process, pre-budget submissions from various organisations and both European and Irish policy priorities, policy proposals are finalised. The Ministers bring these proposals to Government for approval in a formal memorandum. Government agrees the detailed Budget Day revenue and expenditure package and consequential projections for the public finances for the following years.

The Ministers for Finance and Public Expenditure & Reform then present the Budget and the Expenditure Report to the Dáil on or before 15th October. Taxation measures due to take immediate effect are voted on by the Dáil on Budget day by way of Financial Resolutions. These are subsequently included in the Finance Bill which, following the normal legislative process, must be enacted before the end of the calendar year.

The Finance Bill Timetable

The intense timelines of the EU Semester process will be directly reflected in the official Finance Bill Timetable. This is devised on the basis of discussions with the Minister's Office, the Finance Public Expenditure & Reform Committee Clerk, the Bills Office, and the Dáil and Seanad Whip's Office.

An example FB Timetable (for 2015) is reproduced on the next page. Strictly speaking, this is not published until the days immediately following Budget Day, however earlier drafts will be circulated to aid planning.

The FB Timetable is not set in stone, at any point. Similar to all other bills, it is subject to the exigencies of the wider political developments of the day. However, different from most other bills, as a money bill it has a restricted time remit for passage and therefore it is facilitated at all times within the system as a business priority. As discussed previously, the money bill status is further aligned under the terms of the EU Semester which necessitates enactment of the Finance Bill before 1 January each year. Nonetheless, the particulars of the timetable are open to modification but this happens usually by agreement with all parties following discussions between Finance and the office of the Ceann Comhairle.

		October		November		December		January 2016
Sun			1					
Mon			2					
Tue			3	Second Stage	1			
Wed			4	Second Stage	2			
Thu	1		5		3	Seanad 2nd Stage		
Fri	2		6		4		1	
Sat	3		7		5		2	
Sun	4		8		6		3	
Mon	5		9		7		4	
Tue	6		10	Government consideration of CS Amends	8		5	Statutory deadline for Second Stage
Wed	7		11	Bills Office Committee deadline 11am	9	Seanad Committee Stage	6	
Thu	8		12		10	Seanad Committee Stage	7	
Fri	9		13		11		8	
Sat	10		14		12		9	
Sun	11		15		13		10	
Mon	12	Memo for Gov Part 1	16		14		11	
Tue	13	Budget Day	17	Government consideration of Report Stage Amends. Committee Stage	15		12	
Wed	14		18	Committee Stage	16		13	
Thu	15		19	Committee Stage	17	Dáil Recess	14	
Fri	16		20	Bills Office Report deadline 11am	18		15	
Sat	17		21		19		16	
Sun	18		22		20		17	
Mon	19	Memo for Gov Part 2	23		21		18	
Tue	20		24	Report Stage	22		19	
Wed	21		25	Report Stage	23		20	
Thu	22	Publication of Finance Bill	26		24		21	
Fri	23		27		25		22	
Sat	24		28		26		23	
Sun	25		29		27		24	
Mon	26	Bank Holiday	30		28		25	
Tue	27	Dáil Recess (tbc)			29		26	
Wed	28	Dáil Recess (tbc)			30		27	
Thu	29	Dáil Recess (tbc)			31		28	
Fri	30						29	
Sat	31						30	
Sun							31	

Finance Bill List

The immediate consequence of the much tighter EU Semester timelines is that it has created the need for more effective preparation and planning for the Finance Bill at a much earlier stage than was traditionally accepted. This is extremely important, and it has seen a significant culture change to the working methodology for the Finance Bill within RLS since 2013. In the new environment, usually, by early February, the respective corresponding branches of Finance and RLS will engage in a mutual dialogue to create the broad outlines of a preliminary draft FB List. The Finance and RLS co-ordinators will work to facilitate this accordingly.

There are a number of positives for RLS arising out of this, as follows:

- Much earlier opportunity to identify items requiring legislative work.
- Greatly improved lead-in times to provide for more thorough consideration and development of legislative proposals in line with ongoing pre-legislative scrutiny (PLS) initiatives.
- Better management and planning for draft legislative consultations and consensus-building.
- Allow more careful deliberation for legislative drafting and subsequent early dialogue with the OPC.
- Compatibility with the wider economic and budgetary management objectives underlying the broader EU Fiscal initiatives.

The draft FB List will be the subject of a series of formalised FB Meetings between Finance and each RLS division (involved in drafting legislation) separately held at Assistant Secretary and Principal level in the period before Easter. The Finance and RLS co-ordinators attend these meetings for the purpose of jointly recording the decision in regard to each proposed item on the list. This decision is two fold: if the item is to proceed, a specific deadline is agreed for the RLS submission in regard to it. The meetings are intense and fast-paced discussions on all proposed items to date for the bill. The result is the FB List as agreed. Any subsequent changes to this agreed list must be made only by formal agreement of the Assistant Secretary in Tax Policy Division in Finance. This branch must write accordingly to inform the Finance Co-ordinator (who, in turn, automatically notifies the RLS Co-ordinator).

There are a number of things to note about the FB List, as follows:

- It is an early opportunity to identify possible items for inclusion, and also to reach a decision quickly on what items will not proceed (thus making better use of resources).
- The FB List is not set in stone. On the contrary, the FB List is continuously evolving, reflecting all the many different influences that can emerge over the course of the process including political events, the outcome of consultations, the impact of submissions, and the availability of additional information.
- The FB List gives shape to the bill that finally presents. It is a readily accessible opportunity to consider the entire construction of the bill in

the round. An important aspect of this is to allow a shared consideration of items between internal RLS and Finance branches where it may be that action on one item has implications for another (in such cases, parties are strongly advised to discuss any issues or concerns between them accordingly).

- The FB List facilitates a capacity to monitor the progress of the items at any particular stage in the process. It is a crucial instrument for the co-ordinators on all sides.

In due course, the OPC FB co-ordinator is notified of the FB List and of the outcome of these deliberations thus allowing the OPC an early opportunity to assess what may be ‘coming down the line’.

Ongoing Developments of the Budget Process

As seen in this section, the legislative process itself is under continuous development. Change is ongoing and therefore all involved should seek to remain mindful of the evolving conversation influencing key decisions.

As part of the EU Semester implementation mentioned above, a number of significant initiatives have been undertaken in recent years to strengthen methods of pre-legislative scrutiny (PSL) by the Oireachtas. Applying such reforms to the budget process has been a specific objective and this has received renewed focus following publication in November 2015 of the OECD Review of Budget Oversight by Parliament: Ireland. This provides the keystone point of reference for possible establishment of a Budget Office within the Oireachtas. The purpose of such an office would be to facilitate members with a support structure in regard to their early consideration of budgetary proposals, pre-legislative scrutiny, clarification of budgetary policy implications and estimates, and general provision of supplementary information on budgetary initiatives. Such Parliamentary Budget Offices have been established successfully in recent years in Canada, Austria and Australia. The UK set up a similar office known as the Scrutiny Unit in 2011 designed to give Members a better knowledge of how the government manages its finances and the role of parliamentary scrutiny.

Better forms of pre-legislative scrutiny are wholly consistent with the EU Budgetary Semester process. The additional requirements have the potential to facilitate a more cogent and managed approach to the development of tax legislation on its own merits within the wider political environment.

Closer to home, there is the prospect of further reform of the Dail itself. This is largely concerned with consideration of Dail procedures, notably those affecting the formation and conduct of the committee system, and the organisation of more workable approaches to scheduling of Dail business and the capacity to streamline voting arrangements. It also is aimed at improving the quality of parliamentary debate in the interests of achieving better overall outcomes from the time and resources committed to the legislative project.

The Broader Political Environment

The second important influence on the formation of taxation policy is the broader political environment. This is a summary phrase for describing the political, social and economic forces which are constantly at play in shaping decisions on tax policy. This is the working reality of contemporary modern government. In a world increasingly saturated with information and geared toward achieving greater standards of public policy the decisions of Government are a matter of constant scrutiny and accountability. Taxation policy has become an issue of very considerable importance and many interested parties and elements have come to try to exert greater influence over how it is devised. Some of the more prominent elements will be briefly outlined in the following paragraphs.

The Government of the Day

The Government is the key driving force affecting all legislative policy decisions. While it is the Dáil that approves the composition of the Government on the nomination of the Taoiseach, it is the Taoiseach who under the Constitution decides which portfolio each Minister of the Government gets. Subject to the Government acting on the basis of collective Cabinet responsibility, it is the Minister for Finance who is directly responsible for the Budget and Finance Bill. The disposition of the Minister to taxation policy will therefore be a matter of considerable importance. At the forefront remains the basic conviction within Government that taxation measures are a key instrument of economic policy. Each Government has within its powers the capacity to organise its engagement with the economic decision-making process in different ways.

Special Interest Groups

Special interest groups exert a significant influence on taxation policy. Examples of such Special Interest Groups are the Irish Business and Employer's Confederation (IBEC), Vintners Federation of Ireland, Construction Industry Federation (CIF), the main farmers' representative groups, the trade unions, a wide range of voluntary and community groups, and a large number of professional and academic bodies.

As taxation policy is primarily a matter for the Department of Finance RLS has only limited direct contact with special interest groups. On occasions when RLS do meet representatives of special interest groups separately from the Department of Finance it is usually to discuss particular issues in relation to taxation on a more technical level.

Public Consultations

Many issues of public interest are often informed by official consultations where members of the public are invited to make submissions, sometime either written or verbal for consideration in the creation of legislation. For example, in recent years, a number of taxation measures have addressed concerns directly arising from formal public consultations, such as the Appeals process, Pay&File date changes, and Mandatory Disclosure.

Regulation of Lobbying Act 2015

The Lobbying Act came into effect March 2015. This recognises lobbying as an essential element of the democratic process in enabling citizens and organisations to make their views on public policy and public services known to politicians and civil servants. The Act is aimed at making the process more transparent, notably by establishing a formal register of lobbying and by deeming certain public officials as a 'Designated Public Official'. It further seeks to provide a framework in which communications and relationships are conditioned in the interests of more open dialogue on matters of public interest. This provides an opportunity for all parties to be mindful of the responsibilities arising from any public consultation process.

Pre-Budget Submissions from Stakeholders

One manifestation of the work of special interest groups in trying to influence taxation policy takes the form of what have become known as Pre-Budget Submissions. The Department of Finance is the principal focus for these submissions. It may refer some of these submissions to RLS for observations and evaluation. These submissions warrant consideration as some can contain useful suggestions for the improvement of the tax system including the correction of unintended effects of the existing legislation. Generally, however, they are aimed at easing the tax burden of the parties they represent.

The Irish Courts

The legislation which is passed into law by the Oireachtas is subject to interpretation by, and may be challenged in, the Irish Courts and ultimately in the Court of Justice of the European Union (CJEU). This is increasingly the case. The role of highly specialised legal and financial expertise in engaging the legislative framework is reaching ever more demanding standards that directly affect the work of RLS.

The stages in which our legislation can be considered by the Courts are as follows:

- Assessments/estimates or determinations/decisions made on taxpayers by the Revenue Commissioners can be challenged before the Appeal Commissioners.

- If either party is not satisfied with the outcome of an appeal, the dissatisfied party may refer a case to be stated for the opinion of the High Court on a point of law.
- Where the hearing before the Appeal Commissioners began prior to the commencement of the Finance (Tax Appeals) Act 2015, the taxpayer can request that the appeal be brought before the Circuit Court de novo prior to stating the case for the opinion of the High Court. This option is not open to Revenue except in the case of Capital Acquisitions Tax.
- Please note appeal provisions vary slightly in the case of VRT and Customs matters. Appeal provisions vary slightly in the case of other Excise matters prior to the commencement of the Finance (Tax Appeals) Act 2015 only.
- Where either the taxpayer or Revenue is not satisfied with the judgement of the High Court on the Case Stated they may appeal to the Court of Appeal, again on a point of law.

On occasion the decisions of the Irish Courts give rise to consideration of new tax legislation. Attention should also be paid to decisions of the UK Courts. Although such decisions are only persuasive in Irish jurisdictional courts and are not binding, nonetheless they can be instructive/indicative and it is not uncommon for them to be noted by our own tax practitioners and to become the subject of claims or legal challenges here.

EU Law

Since our accession to the EU the Law of the EU is having an ever greater influence on domestic legislation including taxation. This impacts on RLS by obliging it, firstly, to transpose EU Law into Irish domestic legislation and, secondly, to ensure Irish domestic law conforms to EU Law. These aspects are now considered in greater detail.

Under former Article 189 of the Treaty of Rome (now Article 249 of that Treaty as renumbered) the European Parliament acting jointly with the Council, and the Commission have the following powers:

- to make Regulations;
- to issue Directives;
- to take Decisions;
- to make Recommendations;
- to deliver Opinions;
- to issue Communications.

EU Regulations

The Regulation is the most comprehensive form of EU legislation in its scope, its sphere of application and its legal effect. At national level its closest analogy is to an

Act of the Oireachtas. It sets down binding rules applicable generally throughout the whole jurisdiction. It is very commonly used and it is important to remember that it is binding in its entirety - a Member State cannot pick and choose those parts it accepts. As it is directly and immediately applicable in its entirety in all Member States, it is neither necessary nor authorised to reproduce EU Regulations within our legal code. The only discretion the Member State normally would have would be issues left to its discretion by the Regulations. In many cases the Member State is obliged to provide or do certain things but the Regulations leave it to the discretion of the Member States as to how it is to be done - for example, imposing some form of sanction for breaching the Regulations or providing for authorised officers to ensure compliance with them. Note, it no longer requires an Act of the Oireachtas to give them legal effect.

EU Directives

Directives are binding on Member States. Once adopted at EU level Member States are required to implement Directives at national level. This may require an Act of Parliament, a statutory instrument, a change in administrative practice or, in some cases where national law already conforms with the Directive's objective, no response at all. Whether the national response is adequate in terms of the Directive's requirements or not is of course a matter that can be judicially reviewed at national or EU level. It is important to note that, while Member States are obliged to secure the EU objectives as set down in the Directive, how they accomplish this is a matter for themselves.

VAT & Excise legislation has to be framed in accordance with the provisions of the other EU VAT Directives and the EU Excise Directives. Any departures from these provisions in our national legislation are invalid unless a specific derogation has been obtained from the EU.

EU Decisions

A Decision differs from a Regulation in that it is limited to a specific and defined number of natural or legal persons and it has to affect the legal rights and obligations of the person(s) to whom it is addressed. A Decision is binding in its entirety and not just as to the results to be achieved. The majority of Decisions are issued by the Commission and this reflects their use as instruments for the detailed implementation of EU Treaties.

Recommendations and Opinions

Recommendations and Opinions have no binding force in law. Although they may be addressed to individuals or undertakings, they are most frequently addressed to Member States. The distinction between the two measures is that Recommendations are made on the issuing authority's own initiative and usually contain suggested courses of action, whereas Opinions are frequently given in response to a request or initiative from elsewhere and give the institution's thinking on a factual or legal situation. Although, in general, Recommendations have no legal significance in the strict sense, they can have a political and psychological significance in the EU context. Sometimes they can, for example, be a prelude to legal acts, and at other times they may create 'legitimate expectations' in interested

parties.

By far the most common method of implementing EU tax legislation has been the Ministerial Regulation. A second method by which EU legislation is imported into Irish law is by incorporating it in the annual Finance Act.

Obligation to Conform with EU Legislation

EU membership also makes it necessary to ensure Irish domestic legislation and administrative actions conform to EU legislation and practice. Failure to do so may result in a case being taken against Ireland by a natural or a legal person or by the Commission itself in the Court of Justice (CJEU). This is of particular significance for RLS Indirect Taxes as the Court of Justice has ruled on a wide range of VAT and Excise-related legislation.

If national courts experience difficulty in interpreting Community law, they may request a preliminary ruling from the Court of Justice on the issue in question. Article 267 of the Treaty on the Functioning of the European Union (TFEU) provides that the Court of Justice has jurisdiction to give preliminary rulings to any national court or tribunal in two respects: (1) the interpretation of the Treaties and (2) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union. A decision of the Court of Justice is binding not only on the national court on whose initiative the reference for a preliminary ruling was made, but also on the national courts of all of the Member States. In the context of a reference for a preliminary ruling concerning validity, if a European instrument is declared invalid, any instruments adopted based on it are also invalid. The competent European institutions must then adopt a new instrument to rectify the situation.

More pertinently, as mentioned earlier, EU membership, and notably membership of the Euro Single Currency Area, has also seen initiatives to advance the greater convergence of economic and taxation policy. The Fiscal Responsibility initiative 2010 was part of a wider framework of shared policy approaches and dialogues. Ireland continues to participate fully as an equal partner in the EU policy discourse at all levels.

OECD

An increasingly important driver of legislative change is the OECD and many of the initiatives arising from the dramatic expansion of global issues in recent times. Notable among these is the work of the world trade bodies as reflected in areas such as TTIP. Even more pertinent to RLS is the work being undertaken in regard to BEPS and other trading and transfer pricing initiatives.

Inter-Departmental Working Groups

From time to time working parties are established between different Government Departments. The need for these usually occurs where a particular policy option under consideration has implications for more than one Department. It is an effective method of working by way of employing the expertise of other Departments as well as fulfilling the important function of consultation. The Tax

Strategy Group (TSG) is an obvious example; however, there are a wide number of dedicated Inter-Departmental working groups collectively assessing all the implications of proposed policy including the legislative changes required to give it effect.

Special Reports and Studies by Representative Groups, Statutory Agencies or Universities etc.

Special Reports on the state of the economy and the reform of elements of the taxation system are now commonplace and can receive prominent coverage in the media. A wide range of statutory and non-statutory bodies undertake their own studies as a matter of course, some issuing bulletins and statements on a regular basis. Examples of this are the quarterly report of the Central Bank and the many reports published by the Economic and Social Research Institute (ESRI). The main banks now also make reports on dedicated aspects of economic and taxation policy. Representative organisations such as IBEC and ICTU occasionally commission special studies to be undertaken by research institutes and universities and the Government itself may commission independent reports into areas of particular sensitivity or expertise.

Pre-election Manifestos and Policy Documents of Political Parties

Political parties periodically produce policy documents on a variety of issues including taxation. It is common for these policy documents to form the basis of pre-election party manifestos. These manifestos and policy documents are important because many of the proposals they contain evolve to become tax policy and ultimately give rise to legislation. The commitment of Government some years ago to bring two-thirds of taxpayers into the charge to income tax at the standard rate is an example of a pre-election commitment that gave rise to legislative amendments to the income tax code over a number of years.

National Agreements

National Agreements between the Government and the social partners set out considerations that will shape taxation policy over the life of the agreements. Even if proposals do not progress to legislation they may still give rise to considerable work for RLS in the pre-Budget period as the merits and disadvantages of particular proposals are evaluated.

Formal Submissions to the Minister

A major element of the work of RLS is concerned with devising and developing formal submissions on policy proposals for the Minister in close co-operation with the Tax Policy Division of Department of Finance. Finance drive this process within the department and it deploys its own systems to deal with this, separately.

When the Minister makes a decision approving a submission, Finance notify the office of the Chairman of the Revenue Commissioners accordingly with a copy of the submission as signed off by the Minister. The Chairman's Office pass the copy to the Revenue Co-ordinator who has the responsibility of notifying the relevant RLS Division Assistant Secretary and Branch Principal.

The Government of the day, and The Cabinet

Ultimately, the determinations on policy proposals are made by the government of the day. This consists of the Taoiseach and at least six (but not more than fourteen) Ministers. The Government meets and acts as a collective authority, often referred to as the Cabinet. The term "Cabinet" has no formal basis in the Constitution but it is widely used to describe formal meetings of the Government, principally concerned with major policy issues. In regard to the Finance Bill, Department of Finance prepares a Memorandum for the Minister of Finance to bring to Cabinet. The Cabinet must agree to all measures forthcoming, as set out in the Cabinet Handbook.

Conclusion

The many influences described above each provide a valuable contribution to the formation of taxation policy. RLS not only has its legislative role to play in relation to responding to the legislative requirements of the process but also must do so while seeking to fulfil the wider Revenue function of advancing the performance and integrity of the taxation system in general.

Chapter 4

Office of the Parliamentary Counsel

Office of the Parliamentary Counsel

The critical importance of the role played in the legislative process by the Office of the Parliamentary Counsel (OPC) has already been mentioned. This Chapter presents a more comprehensive view of the working relationship between the OPC and RLS with particular emphasis on the Finance Bill.

All draft primary legislation (Bills) must go through the OPC and be officially stamped and transmitted by the OPC before entering the legislative process. It is the OPC's responsibility to ensure that Government Bills are in the proper form and, along with and as part of the Attorney General's Office, to ensure that they are legally sound.

The OPC represents one side of the counsel provided to Revenue by the Attorney General's Office. The other side is the Advisory Counsel based in the same office and it provides a vitally important resource for RLS drafters in pursuit of legal guidance on particular issues which often require broader consideration than the otherwise contained remit of taxation.

It is important for RLS to always understand that Advisory Counsel and Parliamentary Counsel officially have to take instructions from the Department of Finance. This is because the Attorney General is the legal adviser to the Government under the Constitution. Advisory Counsel are not legal advisers to Revenue. For this reason, RLS drafters will often be asked by Advisory Counsel what the views of Finance are. It is also the reason why Advisory side copy Finance with any advices given to RLS – they are obliged to do so. It is on this basis that RLS drafters seek expert guidance from Advisory Counsel. They are a proven critical resource for RLS. Legislative proposals increasingly present challenging issues which can be highly complex and often extremely sensitive. The Advisory Counsel is equipped to consider issues on the basis of a wider approach to the broad legislative environment in which new legislation is being proposed (this is especially so in regard to EU Directives and related matters).

Submission of draft legislation to OPC

As a general rule most draft legislation, especially of a substantive nature that may have been in preparation for some time, or of a routine character such that there is no doubt as to its inclusion in the upcoming Bill, will have been formally agreed and approved in advance of the Budget between RLS and Finance. This may also include required legislation carried over from previous years. With the prior agreement of the OPC, following discussions with the FB co-ordinators in regard to the FB legislative schedule, draft legislation is submitted to the OPC for settling and stamping.

While the level of expertise in preparing drafts by the RLS may sometimes necessitate few if any drafting changes being made by the Parliamentary Counsel

(PC) to a proposed provision, it should be noted that the PC will only settle and stamp if satisfied that the provision is in order and legally sound. The PC often gives considerable time and consideration to a proposal. The PC may revise draft provisions. This can happen, in particular, when a provision deals with an area outside the normal technical competence of the RLS, involving for example consideration of other legal and/or regulatory obligations, constitutional issues, criminal law, EU law and legal and drafting policy.

The OPC has its own internal arrangements for managing the processing of the Finance Bill. In recent years it has assigned a small team of PCs for this purpose. As part of this arrangement, it has been mutually agreed with RLS that the OPC will appoint one member of that team to act as the OPC FB Co-ordinator.

Almost by the very nature of the importance and sensitivity of many taxation proposals by the Government, the Budget and Finance Bill process is characterised by late decisions. RLS works closely with the OPC FB co-ordinator on the wider aspects of the scheduling and other arrangements affecting the successful passage of the Bill to completion.

The new EU Semester process intensifies the period for the Budget and Finance Bill. This is reflected in the official Finance Bill Timetable (discussed in Chapter 3) agreed with the Department of Finance. This one page calendar sets out all the vital timelines and stages for the legislation.

One of the advantages of the new EU semester process is that it has created an environment where better preparation and planning can be invested in the FB process at an earlier stage. The most significant development is that the planning decisions for a new FB are taken early in the new year and no later than February. Revenue undertake to produce an initial consolidated list of Revenue-originated proposals, working to identify possible opportunities for branches to share resources and/or collaborate on certain items as appropriate. This initial list is then passed over to Finance for their stewardship thereafter. The respective corresponding branches of Finance and Revenue then undertake further work to create a preliminary FB list. This list will be the subject of a series of formalised FB meetings between Finance and each Revenue policy and legislation division separately held at assistant secretary level in mid-March. The Finance and Revenue FB co-ordinators attend these meetings at which all proposed items to date for the Bill are discussed. The result is the agreed FB list. Any subsequent changes to the agreed list are made only by formal notification in writing by the relevant section of the Department of Finance dealing with the item to the Finance FB Co-ordinator (who, in turn, notifies the RLS FB Co-ordinator).

The OPC FB co-ordinator is notified of the outcome of these deliberations. This allows the OPC to broadly assess what may be ‘coming down the line’.

The agreed FB list enables RLS to proceed with drafting. However, it is important to note that the ‘approval’ at the FB meetings must not be confused with official Cabinet approval. This can give rise to a number of issues:

- there may be protracted delays in securing final Cabinet approval for a particular legislative proposal and the decisions on complex and lengthy, or potentially controversial proposals may be delayed until shortly before

the Budget or publication of the Finance Bill. This could result in a delay in submitting the proposed draft legislation to the OPC for settling and stamping;

- The OPC comes under intense pressure approaching the deadline for the Budget and publication of the Finance Bill by the sheer volume of approved legislative drafts submitted for settling and stamping.

To address this situation, it has been agreed that RLS may submit its draft legislation to the OPC before securing formal Cabinet approval, on the following conditions

1. the unapproved draft must be clearly marked as such, and
2. the submission will not receive priority attention by the OPC.

This allows RLS to proceed with drafting and facilitates the OPC in managing the volume of submissions more efficiently.

In addition, the OPC may be in a position to informally examine proposed draft provisions at an earlier stage (with the agreement of the OPC). If the draft item does not directly relate to budgetary matters or is of a size, complexity or novelty that could significantly occupy the resources of the OPC, then consideration should be given to asking the OPC to informally examine them in advance.

Procedure for submission of draft legislation to OPC

All provisions submitted to the OPC for the Finance Bill must be accompanied by an explanatory note summarising the nature of the proposal. This note should set out a clear summary of the purpose of the provision and explain each element of the section (subsection or paragraph), detailed as appropriate. This explanation corresponds to the requirements in the Cabinet Handbook for other proposed Schemes of Bills.

If AGO advices have been given or are pending this should be detailed in the note and the relevant advices attached.

Where formal Finance approval for the draft legislation has not been received the covering correspondence to the OPC should be marked in bold upper case font clearly stating such:

THIS PROPOSAL HAS NOT YET BEEN FORMALLY APPROVED BY THE DEPARTMENT OF FINANCE.

This can be a very useful device: it can facilitate early consideration of complex and/or substantial proposals, and it can allow the OPC prioritise those items which have been approved.

The address of the OPC is Office of the Parliamentary Counsel, Government Buildings, Merrion Street, Dublin, D02 R583.

Electronic communications with the OPC

The OPC transmits to the Department of Finance in hard copy each stamped item, and Finance send a pdf copy of this to the RLS FB co-ordinator who retains it for the purposes of proofreading and general confirmation/checking, if required.

The RLS FB co-ordinator conducts most functions using digital technologies as best possible.

The work of the OPC

RLS enjoys a close and collaborative working relationship with the OPC. The OPC are critical to the effective and timely administration of the FB process. The job of the OPC in this context presents an enormous responsibility which continues through to the completion of the process. Even after the Budget and FB, the OPC remains crucial for the purposes of all subsequent proposed amendments to the Bill and is an active partner in the entire FB legislative process.

Chapter 5

Preparing the Draft of Proposed Legislation

Preparing the Draft of Proposed Legislation

The first step in preparing the draft for a proposed piece of legislation is to know as much as possible about what precisely is to be achieved. It is impossible to solve a problem satisfactorily if it is not well understood and so the relevant papers on the topic should be examined in detail. Any legislation of a similar kind enacted previously either here or in another jurisdiction may also be a useful source of guidance. If the aim of the new legislation is to remedy a defect or curb an abuse of an existing measure the basic legislation to be amended must be identified. If, for example, a consolidated Act, such as the Value-Added Tax Consolidation Act 2010, contained the ‘defective’ law, care must be taken to ensure that any changes by way of later Finance Acts are taken into account in the amending exercise.

There are a wide range of legislative reference materials available including many online sources, notably www.oireachtas.ie, and www.bailii.org.co. The Revenue Library also provides a comprehensive range of reference materials.

ITI/King’s Inn’s Advanced Diploma in Legislative Drafting

This diploma is a unique part–time evening programme offering legal practitioners, law graduates or persons with relevant legislative drafting experience the opportunity to advance their skills of drafting legislation and regulations.

For details please contact The Honorable Society of King’s Inns, Henrietta Street, Dublin 1 or email info@kingsinns.ie. RLS have been very supportive of this program since its establishment.

EU Issues

As well as EU law being a source of principles to be observed (see Chapter 3), EU law and its administrative framework can give rise to procedural obligations, as briefly outlined hereunder.

State Aid Rules

If a provision confers a selective advantage on an undertaking or sector, it must conform with EU State aid rules which derive from the Treaty on the Functioning of the European Union. State aid is defined as “an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities”. It covers both grants and tax reductions that are only made available to certain sectors of the economy. Certain provisions may require approval from or notification to the European Commission. Further information can be found here - http://ec.europa.eu/competition/state_aid/overview/index_en.html

Code of Conduct on Business Taxation

Member States may not introduce provisions that constitute harmful tax competition under the Code of Conduct criteria agreed by EU Member States in 1997.

The criteria for identifying potentially harmful measures include:

- an effective level of taxation which is significantly lower than the general level of taxation in the country concerned;
- tax benefits reserved for non-residents;
- tax incentives for activities which are isolated from the domestic economy and therefore have no impact on the national tax base;
- granting of tax advantages even in the absence of any real economic activity;
- the basis of profit determination for companies in a multinational group departs from internationally accepted rules, in particular those approved by the OECD;
- lack of transparency.

Any provision introducing preferential levels of business taxation (i.e. where a rate lower than the standard rate is applied in respect of certain income / activities) must be notified to the EU Code of Conduct Group.

Further information can be found here -

http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

Treaty Freedoms

Legislation must, of course, always respect the four fundamental freedoms (i.e. free movement of goods, freedom of movement for workers, right of establishment and right to provide services, and free movement of capital) as enshrined in the EU Treaty.

Queries in relation to EU Direct Taxes issues should be referred to EU Branch, International Division. Queries in relation to EU Indirect Taxes issues should be referred to Indirect Taxes, P&L Division.

Previous Finance Acts

A general examination of earlier Finance Acts will give an idea as to the different formats that can be used for drafting tax law. The use of subsections and the order that further sub-divisions follow - paragraph, subparagraph, clause, subclause - will become familiar. Alternative styles using paragraphs instead of subsections will also be found.

Interpretation Act 2005

Mention was made of the Interpretation Act, 2005 in Chapter 2. Its purpose or function is, to quote from its Long Title, 'An Act respecting the interpretation and application of Acts and of Statutory Instruments made under Acts and providing

for the repeal of certain enactments relating to those matters.' Among its provisions the following might be noted: -

- section 9(1) deals with references in enactments to Parts, Chapters, sections, Schedules or other divisions into which an Act may be divided;
- section 9(2) deals with references in enactments to subsections, paragraph, subparagraph, clause, subclause, article, subarticle, or other division into which a section may be divided;
- Part 3, section 16 deals with the commencement of Acts;
- Part 4 deals with meaning and construction of words and expressions, in particular, section 18 is of interest as regards the general rules of construction of Acts;
- Part 6 deals with the effects of amendments of enactments and the effects of repeals and substitutions;
- the Schedule addresses the interpretation of particular words and expressions.

New Legislative Format 2013

The new format for the layout of all legislation in the state was introduced in 2013. This applied the standard international notation and configuration of legislation and it provides a more linear and accessible presentation.

To facilitate a more direct application of the new drafting conventions, it may be helpful to use the dedicated RLS Drafting Template. This is a standard Word document template, available within RLS, featuring all drafting options of the new format readily available by drop-down selection.

Drafting Techniques and Guidelines

Styles of Drafting

How a particular piece of legislation is drafted will depend to some extent on the approach of the drafter. Unless the item involved is of a very routine nature different people will tackle it as they see best resulting in various solutions to the problem in hand. There are therefore a number of ways of drafting all of which are equally valid. The aim should be to draft legislation in the clearest and most straightforward manner consistent with achieving its objectives. This ideal will not always be achievable and complex measures may well be unavoidable – particularly, for example, where legislation aimed at countering avoidance is involved.

One drafting practice that should be avoided is so-called piggy-backing. This is where the drafter rather than producing a self-contained comprehensive section instead produces a statement that cannot be understood without reference to a number of other pieces of legislation. This practice serves only to complicate taxation law to the point where it is intelligible only to the drafter and experienced practitioners.

Another problematic drafting device to be avoided is referred to as the ‘as if’ approach. This technique may have certain advantages in that it saves time by drawing on existing legislation and adapting only certain parts as needed. It thus results in more concise legislation than would otherwise be the case. The benefits may be gained at some considerable cost in that the resultant legislation is generally anything but clear and the reader is obliged to make frequent references to the earlier measure(s) from which it draws.

The following general pointers are worth bearing in mind when attempting to draft any provision:

- Establish clearly the aim of the draft. The question is whether the draft is doing what is intended? In other words, is the draft clear and coherent and does it ensure that the proposed measure delivers what is required;
- In the case of an amendment, ensure the draft ‘fits’ properly with what it is amending. For example, if material (say, a new subsection) is being introduced into an existing provision, ensure that it is placed logically in, and interacts as intended with that provision;
- In the case of an anti-avoidance measure, the draft should be limited to dealing with the identified abuse i.e. care must be taken to ensure it does not do more than intended, for example, by affecting legitimate arrangements;
- It is important to ensure every term is defined.

- Careful consideration should be applied to cross-reference(s) to the draft, or any other consequential changes needed in a provision being amended (or, indeed, in any other area of the governing Act which refers to the provision being amended);
- Check for the possibility of inserting identical numbers on completely separate - new - blocks of amending legislation into the Act being amended;
- Is it necessary for the proposal to indicate from when it is to operate and the specific criteria by reference to which section is to operate? Does it provide all the necessary information required to enable the reader to know precisely the extent of the application of the section and the conditions determining the extent of that application?;
- Certain measures require a particular commencement date to be specified - rather than relying on the general commencement date (provided for in the “short title, construction and commencement” section at the end of the Finance Bill);
- Are there specific criteria by reference to which the commencement date can be determined?

Arrangement of the Finance Act

The Finance Act is arranged so that it is coherent and follows a logical order. It may contain the following divisions (which are in hierarchical order):

Part
Chapter
section
subsection
paragraph
subparagraph
clause
subclause

In addition, at the end of the Act, there may be one or more Schedules.

Parts and Chapters are identified at the start of the subdivision to which each of them relate. This is done by a cross-heading (heading) identifying the nature of the subdivision (Part, Chapter, etc.) with designatory numerals in sequence (Part 1, Part 2, etc.) followed by another cross-heading (heading) descriptive of the Part or Chapter, etc.

Parts

The presentation of the Act in Parts serves two purposes:

Parts make it easier to comprehend the structure and sequence of the contents. A Part indicates the cohesive relationship of the provisions within it to one another and their separation from provisions in other parts.

Parts are numbered in Arabic numerals (1, 2, 3 etc.) and given a descriptive heading.

Chapters

A Part may contain subparts called Chapters.

Both Parts and Chapters are identified by Arabic numerals and may contain a provision with definitions or other interpretations used in the Part or Chapter. If there is such a general provision for use in respect of the Part or Chapter, it is normally the first section.

Sections, subsections, etc.

A section is the basic division of the Act.

Sections may be divided into subsections, paragraphs, subparagraphs, clauses and subclauses.

Each section should be kept to a manageable length.

It should be assumed that the section is to be read as a unit. The relationship of subsections to one another is generally complementary and obvious.

Schedules

Schedules to a Finance Act serve a number of purposes. Schedules may indicate how a piece of legislation is to be administered or they may contain substantive provisions important in themselves. A Schedule has to be tied into the Act by an express reference to it within one of the sections of the Act (e.g. "Schedule 1 shall have effect for the purposes of supplementing this section" - see *Finance Act 1999, section 71(2)*; "Mineral oil tax shall be charged at rates specified in Schedule 2" - see *Finance Act 1999, section 96(1)*). While a Schedule is as much part of an Act as any other part, it has been ruled in the UK courts that if something in a Schedule contradicts an earlier provision, the provision prevails over the Schedule.

Generally, Schedules should be numbered in Arabic Numerals (Schedule 1, Schedule 2, Schedule 3, etc.).

Interpretation

The Act usually has an interpretation section. Because of the nature of the Finance Act there may be separate interpretation sections for different Parts or Chapters of the Act. These sections are used to improve the clarity of the Act.

Remember that while definitions or other interpretations of general application for an Act cover the whole Act (including any Parts, Chapters and Schedules), if the definition or other interpretation is in a Part, Chapter or Schedule, then they only cover the Part (including any Chapters), Chapter or Schedule, as the case may be.

In drafting definitions and other interpretations, use “means” if the complete meaning is stipulated. The use of “includes” is appropriate if the stipulated meaning is incomplete. Do not use the phrase “means and includes”.

The word “the” should be excluded as a prefix to the word or phrase to be defined or interpreted if it can be avoided; e.g.

“Principal Act” means

and not

“the Principal Act” means

A **definition** is all encompassing. For example, “Minister” means the Minister for Finance – it is clear what is intended to be covered i.e. it is definitive.

An **interpretation** includes any definition but need not be definitive; if what is intended is to be illustrative rather than exhaustive (i.e. rather than setting out all items covered by the word or phrase, it sets out only examples of the type of item to be covered or not covered by the word or phrase) it is an interpretation and the term “includes” or “does not include” is used.

Formatting of the Finance Bill

A special RLS Drafting Template is available from the RLS co-ordination unit for use by drafters. This is set to reflect the overall formatting requirements of the bill. It has been devised in association with the OPC and Bills Office.

Sections

Sections are divided into sentences and normally each sentence is a subsection. Where appropriate and for clarity, the use of more than one sentence in a section which has no further subdivisions is acceptable. However this should not be used to replace the use of subsections where their use would be appropriate.

Where there are no subsections in a section, a section can be divided into paragraphs divided into subparagraphs, subparagraphs divided into clauses and clauses divided into subclauses.

Where there are subsections in a section each subsection can be divided into paragraphs, and so on down to subclauses as above.

A qualification to a section, subsection, paragraph, subparagraph, clause and subclause is called a proviso. Generally, the “Provided that” mechanism is now rarely used. The Taxes Consolidation Act 1997, replaced provisos in the pre-consolidated Acts by text running and beginning with the words “but if” instead of “Provided that”. Alternatively, it may be possible to draft what would be a proviso as an appropriate subdivision of the section.

The following is a broad list of elements specific to drafting of sections:

1. Sections may consist of one sentence with no subdivisions and this sentence is (apart from a title) laid out as a section.
2. Sections may occasionally consist of more than one sentence if the subject matter is the same and very closely related. These two sentences are laid out as a section.
3.
 - (1) Sections may be subdivided into subsections for related matters where each subsection consists of one or more than one sentence.
 - (2) Where a section is subdivided into subsections, it is indicated by using an Arabic numeral within brackets as in this case.
 - (3) The text you are now reading is laid out in the format of a subsection and is always in tabs rather than indent.
 - (4) Sometimes it is useful -
 - (a) for ease of reference, or
 - (b) for clarity sake,to divide subsections into paragraphs, as indicated here.
 - (5)
 - (a) Subdivisions into paragraphs can be as in *subsection (4)* with opening words before the first paragraph.
 - (b) Subdivisions into paragraphs can also be in a format, as in this case, with the text in sentences.
 - (c) The subdivisions into this type of paragraph (running immediately on from the subsection reference) are used where the material in the subsection is closely related enough (in the context of the overall section) to warrant its use.
 - (d) All paragraphs are indented and normally are indicated by using bracketed lower case letters “(a), (b), (c), (d)”... etc.
 - (6)
 - (a) Paragraphs, of either *subsection (4)* or *(5)* type, can be subdivided into subparagraphs.
 - (b) The subdivision of paragraphs is into subparagraphs and are -
 - (i) normally identified using bracketed lower case Roman numerals “(i), (ii), (iii), (iv), (v), (vi).....” etc., and
 - (ii) indented further than the paragraph to which they relate (as in this subparagraph).
 - (7)
 - (a) Paragraphs subdivided into subparagraphs can be further subdivided -
 - (i) from a subparagraph into -
 - (I) two clauses,
 - (II) three clauses, or
 - (III) more than three clauses (these are clauses),and
 - (ii) from a subparagraph into -
 - (I) two or more clauses, or
 - (II) two or more clauses, each of which may be further subdivided into -
 - (A) two subclauses, or
 - (B) more than two subclauses (these are subclauses).

Notation for sections

As can be seen from the above, for sections and subdivisions of a section of an Act there is a hierarchy of use of notation, as follows:

- Arabic numerals in ascending order (**always a section**)
1, 2, 3, 4, 5, 6.....etc.
- Bracketed Arabic numerals in ascending order (**always a subsection**)
(1), (2), (3), (4), (5), (6).....etc.
- Bracketed lower case letters in alphabetical order (**always a paragraph**)
(a), (b), (c), (d), (e), (f).....etc.
- Bracketed small Roman numerals in ascending order (**subparagraphs**)
(i), (ii), (iii), (iv), (v), (vi)...etc.
- Bracketed capital Roman numerals in ascending order (**clauses**)
(I), (II), (III), (IV), (V)...etc.
- Bracketed upper case letters in alphabetical order (**subclauses**)
(A), (B), (C), (D), (E)...etc.

However, provisions in paragraphs (for which (a), (b), (c), etc is always a paragraph) may revert out of paragraphs and revert to the level of a subsection, as in the following example, and go back again into paragraphs (as in (i), (ii) below).

-
- (2) Text text-
- (a) text text text text text text text text text text, or
- (b) text text text,
- text text-
- (i) text text text text text text text text text text, or
- (ii) text text text,
-

Also note that the indentation for paragraphs (i) and (ii) is the same as that for paragraphs (a) and (b).

There are many permutations and combinations of this. The point to remember is that if you revert out of a subdivision to a higher subdivision and then revert back in again to the lower subdivision, you use the next level of notation not already used in that sequence of subdivisions. The question to ask yourself is “Will my notation be ambiguous if there is a cross-reference to it?”. Whether there is or is not a cross-reference in the draft is not relevant, there could be a cross-reference in a future Act to the provision in question.

Schedules

Schedules can consist of Tables of information or paragraphs or such other arrangement as is appropriate in the circumstances.

In the Finance Act, Schedules facilitate the setting out of –

- lengthy repeals or consequential amendments;
- tables relating to taxation matters;
- lengthy lists of named organisations or other bodies.

As a consequence, Schedules often have the effect of making the Act more readable.

Tables

Tables are drafting devices which can have either of two purposes -

- They may be **informative** i.e. designed merely to show, at a glance, how a given piece of legislation will read after it has been amended by a measure in the Bill; in such a case, the revised wording will appear as a Table in small print. There must be nothing new to the text in the Table except that expressly provided for in the text providing for the Table. Since an informative table merely purports to state the law as it stands after an amendment, there is no need to amend such a table when there is a subsequent substantive amendment. However, consider inserting another similar Table.
- They may be **substantive** and used to shorten a draft from a narrative form to a shorter narrative with a visual form, e.g. a table showing the various rates of tax as in section 15 of the Taxes Consolidation Act 1997. It is particularly useful where the Table is relatively short and for clarity merits being inserted with the substantive text and not placed in a Schedule. When the law changes, such Tables have to be amended or substituted – see e.g. section 3 of the Finance Act 1999. indicating, for example, that a particular definition is to be amended in a particular way in various provisions which are then specified in the Table; in such a case, the Table print is in normal size.

Use of Language

Well-drafted legislation calls for **consistency, coherence** and **clarity**.

Consistency in style and grammar is important because enactments are drafted, amended and re-enacted over a long period of time by different drafters. They are interpreted by the judiciary, administrators, persons to whom they are addressed, the legal and other professions and by the public.

Brief, concise drafting usually leads to clear, understandable legislation. Generally, short words are preferable to long words. A simple sentence is easier to understand than a complex or compound sentence. Omit needless words. In drafting do not use jargon, slang, overly technical language, “legalese”, or foreign phrases (including Latin legal terms) unless the word or phrase is a term of art or its use is supported by relevant case law.

Vagueness

Caution should be exercised in the use of language that is so indefinite that it is meaningless or begs a challenge in court as invalid for vagueness.

Consistency

The following should be noted:

- Do not use the same word to convey different meanings.
- Do not use different words to convey the same meaning.
- Do not use a synonym if you are trying to indicate a difference in substance.

Word Choice and Usage

The following are some basic rules to follow in choosing words:

- Use simple and familiar words unless they do not accurately express the intended meaning.
- Use a single word, if possible, rather than a phrase.
- Prefer verbs to noun forms.
- Do not use different words to express the same meaning, or the same word to express different meanings.
- Delete unnecessary words as they can lead to confusion and ambiguity.
- Where possible, avoid Latin and French expressions, jargon, journalese and archaic words or phrases.

Recommended or required usage of certain words and phrases

Citations

The general practice is to cite an Act by reference to its short title.

Deletion of commas, etc., in short titles

The comma, which appears before the date reference is to be deleted, and any period mark after the date is also to be deleted unless grammatically required.

“the State”

When referring to the legal jurisdiction (including the organs of State) established by the Constitution of Ireland (Bunreacht na hÉireann) refer to it as “the State”.

Amendments to Finance Acts

Textual amendments

Textual amendments to Finance Acts involve inserting, adding, deleting or substituting –

- a provision into, from or of the Act, or
- material into, from or of an existing provision of the Act.

Partial amendment of provision

Apart from the substitution of the whole of a section, Part or Chapter of an Act or of a Schedule to an Act, there are two basic layout approaches for identifying the provision to be amended, as follows:

Examples

Section 6 of the XY Act 200_ is amended by

The XY Act 200_ is amended in section 6 by

The first version should be used where there are a number of sections of an Act to be amended by the amending Bill which are contained in different sections of the Bill.

The second version should be used where the Bill is amending an Act in one section of the Bill (or in one section of the Bill with a reference to a Schedule to that Bill).

Substituting the whole of a Section, Part, Chapter or Schedule

Where the whole of a section, Part or Chapter of an Act or of a Schedule to an Act is substituted, the verbal style rather than the nominal style is now preferred. Examples as follows:

The Principal Act is amended by substituting the following for

by substituting “.....” for “.....”

Nominal approach: by the substitution for “[old text]...” of “[new text]...”

Verbal approach (preferred): by substituting “[new text]...” for “[old text]...”

by inserting “.....” after “.....”

Nominal approach: by the insertion after “[old text]...” of “[new text]...”

Verbal approach (preferred): by inserting “[new text]...” after “[old text]...”

There may be occasions where, in its context, the nominal approach will read better. In that case the nominal approach should be used.

Legal action verbs: “shall” and “may”

“shall” - Use it to say a person or a body “has a duty to” do something or “must” do something.

Where no obligation or duty, etc, arises try to avoid using “shall” in a non-mandatory sense e.g. “shall be guilty of an offence” and use the present indicative e.g. “is guilty of an offence”

“may” should be used where a power, permission, benefit or privilege given to some person may but need not be exercised; exercise is discretionary.

Fundamental elements of Punctuation

Punctuation provides a signpost to sentence structure. It makes it easier for the user to comprehend the structure of the sentence and therefore to understand the message.

Use punctuation only if it serves a demonstrable purpose. For example, a series of lettered paragraphs might correctly be introduced by a colon or without punctuation marks but by a dash, and these practices should be followed consistently, unless the meaning clearly requires a departure. Similarly, each paragraph in a series might end with a semi-colon or a comma, and again, a consistent practice should be adopted.

Which practice to follow depends on the content. If a sentence contains a list of propositions in paragraph form, use a colon to introduce and semicolons to separate the paragraphs. If a sentence contains a series of short items which flow naturally into one another, then no mark of punctuation is required to introduce the paragraphs, but a dash is used and commas should separate the items.

The best practice is to use a dash and commas, for example, where a sentence runs on.

Full Stop

Every sentence ends with a full stop. There should be no full stop after a cross-heading, title, number, table or symbol of currency or measurement. A full stop is used at the end of most abbreviations (for example “etc.” – which is never used in the text of an Act but can be used in sidenotes).

Comma

Commas serve two distinct purposes: to separate and to enclose. A comma may separate -

- items in a series (whether words, phrases or clauses),
- words or numbers where misunderstanding might otherwise result, or
- long independent clauses joined by conjunctions such as “but”, “and”, “nor”.

Commas should never enclose a restrictive defining clause. A restrictive defining clause is a clause without which the substance of the sentence would be incomplete. The underlined relative clause in the following sentence, for example, should not be enclosed in commas because it is essential to what the drafter needs to communicate.

The Authority may recover as a debt due from the owner of the licensed works costs and expenses that are reasonably incurred in taking measures for remedying pollution damage.

In the following sentence, a non-defining clause is correctly enclosed with commas because it could be omitted without changing the essential meaning of the sentence.

The members of the Board, who are appointed under section 9, shall hold office for a maximum term of 4 years.

Except for commas enclosing material of a parenthetical nature, a comma should neither separate a subject from its verb nor a verb from its object.

Apostrophes

Use apostrophes only to indicate the possessive case, either in the singular or plural, as in “officer’s” or “members’”. However, generally avoid using the possessive.

Colon

The principal use of the colon in legislation is to introduce a series of paragraphs, subparagraphs or a list or tabulation. Semi-colons then follow the colon.

A colon is used at the end of the enacting clause-

“BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:”

Semi-colon

A semi-colon is a mark of co-ordination not termination.

- It may join in one sentence two independent clauses, which are sufficiently related to make it desirable to show their coherence in one sentence.
- It may co-ordinate a series of paragraphs, subparagraphs or items listed, for example in an interpretation section.

Parentheses

Parentheses or brackets enclose explanations, illustrations or digressions that are loosely connected with the message of the sentence. Use them with caution.

Hyphens

Compound adjectives - Hyphenate a compound adjective e.g. self-employed person.

Many words that are hyphenated and used as adjectives are not hyphenated when used as nouns.

Certain prefixes - Use a hyphen with all prefixes before proper nouns.

With the prefixes “ex-”, “self-” and “all-” and the suffix “-elect”, use a hyphen with any noun.

Capitals

There is a trend against unnecessary use of capitals to begin words. When in doubt, reject the capital. Take care, however, to be consistent. Use a capital for –

- the first letter of the first word in a sentence;
- the first letter of the first word of a title;
- proper nouns and proper derivatives of proper nouns (example: Ireland, Irish);
- references to “the State”
- months of the year and days of the week;
- the first letter of the names of specific people, places, institutions, historic events, things or ideas when the full name is given;
- Act, when making an internal reference to the Bill you are drafting (“in this Act”);
- defining a proper noun e.g. “Minister” means the Minister for Finance;

Reference to Dates

Dates should be presented in the format “1 January 2016” (i.e. without commas).

Italics

Italics should be used in the following cases:

- Scientific names
- Classical words or phrases used in English (for example “*ultra vires*”). Note that such words and phrases should not be used where there is an appropriate English word, for example, use “in good faith” instead of “*bona fide*”. However, do not italicise “per cent”.
- In references to “the *Iris Oifigiúil*” (i.e. the official State Gazette).
- It is the practice of the Bills Office to italicise cross-references within a Bill to itself. This facilitates the identification of references that could change in consequence with the insertion of amendments as the Bill goes through the Houses of the Oireachtas. Similarly, internal references to the short title and new collective citations (other than in the substantive section) are italicised to facilitate amendment in the Bill to the year reference as a result of the Bill being enacted in a year subsequent to its initiation.

Numbering and Lettering Practice

Other than where the number is “one” or the first word in a sentence, cardinal numbers are to appear in the text as Arabic numerals (2, 3, 4, etc., ...). Exceptions to this would include -

- cases where there is a textual amendment of some but not all numbers in an Act which are in words
- where it would otherwise read better.

Percentages (including “1 per cent”) appear in Arabic form, except as the first word of a sentence.

Numbering and Lettering Practice - Specific

Use Arabic and not Roman numerals to number Parts, Chapters, sections and subsections.

Do not use bullet or dot points, since they create difficulties in making cross-references and subsequent amendments.

While a section “1” and subsection “(1)” are always designated as above, paragraphs may (in addition to and where “(a)” has already been used in a provision) also be identified by “(i)”, “(I)” or “(A)”. The designatory number or letter for paragraphs (apart from their first use with (a), (b), (c) etc.), subparagraphs, clauses and subclauses depends on the layout of the section in question (see “Formatting of Finance Bills” above).

Convention for numbers, use of commas

With numbers of 1,000 and up which are amounts of something, the convention of using a comma is to be followed, as the following example shows: 5,989,674.

Compound numbers, use of hyphens

Where compound numbers from 21 to 99 have to be spelt out (for example, for consistency of style or approach) a hyphen is used e.g.: twenty-one, ninety-nine.

Amounts less than one and fractions

Amounts less than one should as far as possible be expressed as decimal amounts. Always use a “0” to the left of the decimal point where there is no whole number.

Where fractions must be used, express the fraction in numerals or words rather than fractions. A hyphen is used where it is appropriate to identify a fraction in words. e.g. one-half.

Monetary amounts

Monetary amounts of one euro and above should be expressed in numerals preceded by the euro symbol.

Time

Time should be expressed as follows: 9 a.m., 10.30 p.m., 12 noon, 12 midnight.

Metric measurements

All units of measurement should be expressed as metric units unless there is a compelling reason to do otherwise.

Singular and Plural

It is normal drafting practice to make the subject matter of a provision singular rather than plural. Use the singular even if the enactment encompasses both.

Use of Pronouns

Use pronouns to avoid producing unnatural and stilted sentences. However, what they refer to - their antecedents - must be clear. It is preferable that a pronoun follows the noun to which it refers.

Relative pronouns: restrictive and non-restrictive clauses: “that”, “which” and “who”

A relative pronoun introduces a subordinate clause that modifies a noun or a pronoun occurring elsewhere in the sentence and connects a dependent clause to the main clause. It is also a substitute word that refers to its antecedent and stands for that antecedent in a subordinate clause

“Who” relates to a specific person. “That” relates to animals, persons or things and introduces restrictive clauses. “Which” relates to animals, persons or things and introduces non-restrictive clauses.

The distinction between “that” and “which” in restrictive and non-restrictive clauses eludes many drafters.

“that”

Use “that” to introduce restrictive clauses, i.e. clauses upon which the meaning of the sentence depends; clauses that specifically identify the subject or object you are describing. Commas do not usually set off these clauses.

“which”

Use “which” to introduce non-restrictive clauses. Non-restrictive clauses are those that are in the nature of being parenthetical or a commentary. Although they provide additional information about the subject or object, this information is nonessential to the meaning of the sentence. Commas generally set off these clauses.

Gender

Bills and Statutory Instruments are by virtue of a Cabinet decision to be drafted in gender-neutral language as far as possible. However, measures primarily applicable to men are to be framed in the masculine and measures primarily applicable to women in the feminine. This requirement is interpreted as permitting “he or she” and “his or her” as appropriate.

Care should be taken with gender proofing, by way of amendment, existing Acts and statutory instruments that are not themselves gender proofed.

Gender-specific nouns and adjectives often can be easily replaced with neutral terms, for example:

Upon written request from an employee, the employer shall provide the employee with an opportunity to review the employee's personnel file.

When repeating the noun results in a sentence that is cumbersome and confusing, redrafting the sentence according to one of the other approaches set out in the rest of this Chapter may be necessary.

Drafting Amendments to the Finance Bill

Amendments at both Committee Stage and Report Stage of a Bill before one of the Houses of the Oireachtas follow a general formula of words. These technical words allow for an amendment to be inserted in its correct location and the deletion (if appropriate) of words or provisions in the Bill "as initiated".

Committee Stage Amendments

Committee stage amendments are identified-

- primarily by reference to the provision to be amended (i.e. the section or Schedule number or the long title);
- then, normally, by reference to the page, subsection being amended (if any), line or lines being affected and the words enabling the amendment.

Example

Section 2

In page 9, subsection (7), line 23, to delete "or" and substitute "and"

Sometimes at Committee Stage a section is to be deleted without the insertion of a substitute section. In that case there is no draft replacing that section but a note can be stamped by the OPC and supplied to the Department as follows:

Section [insert section number] or **Schedule** [insert section number]

Section proposed to be deleted.

— An tAire Aireagadais

Where a section is to be substituted for a section of the Bill at Committee Stage, then the new section goes in between the previous section and the section being substituted, for example:

Section 10

In page 5, between lines 7 and 8, to insert the following new section:

"10". *

Report Stage Amendments

Report Stage amendments are identified by reference to the relevant page and line number without reference to "Section" or "Schedule" as a heading and without reference to a subdivision (e.g. "subsection (2)") in the enabling words.

The first Committee Stage amendment above would, if a Report Stage amendment, read as follows - with strikethrough text deleted and italic words inserted in ordinary font, for example:

Section 2

In page 9, ~~subsection (7)~~, line 23, to delete “or” and substitute “and”

Further Advices

If a doubt arises as to the technical words necessary for a particular Committee or Report Stage Amendment the RLS drafters concerned should consult with the Office of the Parliamentary Counsel for guidance.

Electronic Communications and drafting software

Most communications between Government Departments are now conducted by email, using encrypted software. Hard copy administration of stamped FB provisions is now limited to a direct correspondence between Department of Finance and the OPC. RLS is happy to receive electronic copy of items as agreed for stamping by the OPC. Subsequently, the OPC provides Finance with a hard copy of each actual stamped item, and Finance send a pdf copy of this to the RLS co-ordinator who retains it for the purposes of proofreading and general confirmation/checking, if required. The RLS co-ordinator conducts most functions using digital technologies as best possible.

The issue of new digital applications is under constant consideration by all parties concerned. Such systems are currently being devised within the framework of the government e-Legislation and e-Cabinet projects which are being rolled out incrementally. However, it can be influenced by decisions made in a more general context by the relevant government departments such as PER and OPW operating under sometimes pre-existing contractual obligations or ongoing projects. In terms of the drafting of legislation, 2010 saw the official roll-out to Departments including the Attorney General of a new drafting support system known as Legislative Work Bench (LWB). A principal user is the Bills Office, which is now able to directly undertake official amendments and corrections of bills without having to go to any external printer with mark-up copy corrections. LWB has been carefully considered for the FB. However, a number of issues arise in regard to its adoption, as follows:

- LWB is a complex application. It is based on what was known as ‘desktop publishing’ software. This demands specialised operational skills, and it is accepted that such skills are best honed under an active continuous publishing environment (such as enjoyed by users in the Bills Office or AG’s or Department of Justice).
- The FB is now a once-annual event and any other money bills typically arise on an irregular basis. The FB is also a money bill which must be enacted within mandatory deadlines. To date, it has been considered a potential high-risk to adopt the LWB program under these circumstances.

- In due course, it is anticipated that the desk-top publishing based LWB system will itself be upgraded using more advanced virtual digital systems which enjoy user-friendly application and more compatible alignment with recent advances in printing technologies. It is understood underlying existing contractual dimensions will influence developments.

The systems management required in regard to all of these factors is under constant review in discussions between the RLS co-ordinator and all other agencies involved. At all times the demands of the underlying statutory commitments and protocols of the legislative process will remain paramount.

Chapter 6

The Budget

The Budget

The Budget is the annual financial statement of the Government. In recent years, it has been formally presented to Dáil Éireann jointly by the Minister for Finance and the Minister for Public Expenditure & Reform (PER). It is widely observed by the media, the general public and the financial markets as the most significant national economic event on the calendar. The word budget is derived from the French *bougette* or leather bag. In England by the early 18th Century it had become a common word for a dispatch box in which official papers were kept and to this day, in the UK, tradition has it that the Chancellor of the Exchequer is said to ‘open (the) budget’ when making this annual financial statement to the House of Commons on Budget Day.

EU Semester and Budget Timelines

As discussed in Chapter 3, the EU Semester has transformed the budgetary timelines. Under the EU budgetary mechanism, Budget Day must take place annually prior to 15 October, in time for publication of the corresponding consequential money bill (Finance Bill) to be enacted no later than 31 December of the same year (to be in force as from 1 January of the following year).

The effect of this cannot be overstated. A planned budgetary cycle characterises the new approach, designed to facilitate more coherent and uniform EU fiscal initiatives within the Eurozone. Whilst the ‘money bill’ legislative machinery of the state remains largely unchanged the parameters for its application are altered, noticeably reflected in the budget timelines. This has significance for Budget Day Financial Resolutions (FRs): Whilst they enjoy a ‘four month’ window as temporary legislation pending enactment, under the new semester enactment must obtain by 31 December of that year. These new arrangements should be borne in mind at all times when considering this chapter and the legislative process for the Finance Bill in general.

The Budget Speech

The Budget Speech gives details of the previous year’s budget outturn, comments on the current economic condition of the country, and projects a national financial plan for the year ahead. It also gives details of the various changes in taxation that the Government proposes to make in line with these plans. In so far as proposed changes in taxation are concerned it is important to note that the Budget speech itself has no legislative force – it is merely a statement of intent.

The preparation of the Budget Speech is a matter for the Department of Finance.

However, in the last days leading up to the Budget RLS will receive advance notice of the draft taxation element of the Budget speech. This draft is checked for technical accuracy by the respective RLS branches responsible for the taxation measures in question and any relevant Financial Resolutions (FRs) will also be prepared.

Budget day can sometimes be the occasion of a Ministerial Statement in regard to the Operative Date of budgetary measures. Great care is necessary in regard to such statements to avoid creating possible legislative uncertainty that might emerge from them. The issues around this can be complex, however advices suggest that it may be safer to utilise the FR procedure, if possible, instead of relying upon a ministerial announcement on Budget Day. This is particularly relevant for taxation, for example, any initiatives aimed at closing off ‘tax loopholes’ to prevent any exploitation of the interregnum period between announcement and enactment. A ministerial statement may be at risk of challenge: a FR has statutory effect for its duration pending enactment (four months, or prior to 1 January as appropriate).

Very strict confidentiality must surround the Budget as many of the measures announced can have important implications.

During the course of the Budget Speech in the Dáil the Secretary General, the Second Secretary and the Assistant Secretary of the Tax Policy Division of the Department of Finance, and also the Chairman of the Revenue Commissioners and the two other Revenue Commissioners take their places in a reserved section of the Dáil Chamber. They will be in a position to advise the Minister on any points that may arise in the course of his Budget speech. Accordingly, RLS prepares a comprehensive brief on any Financial Resolutions for each member of the Board.

The Budget Debate

The Budget debate is governed by the normal rules of the House. Following the Budget Speech the Finance spokespersons of the main Opposition parties in the House reply to the Minister’s statement. The order of speaking is dictated by the size of the parties’ representation in the Dáil. Under Dáil Standing Orders a party in opposition has to consist of at least two members before being eligible to reply to the Budget Speech. Generally, there is no specific time limit for it but it must draw to a close before the publication of the Finance Bill. The budget debate can range discursively over the whole Budget and any Deputy may make a contribution.

There is no involvement for Revenue staff in the Budget debate. No briefing is required and attendance at the Dáil is not necessary. Copies of transcripts of the Budget debate can be obtained either from the Department of Finance or from the Oireachtas website. These may be useful in preparing briefing for the Committee Stage of the Finance Bill.

Upon conclusion of the Opposition spokespersons’ contributions the Dáil then proceeds to debate the various Financial Resolutions that may be associated with the Budget. Usually, due to media commitments by the Minister for Finance on Budget night, Financial Resolutions are moved by another member of the Government. Officials of the Department of Finance and the Revenue Commissioners attend in the Dáil to advise accordingly. By custom, the RLS PO leading the RLS branch responsible should attend.

Financial Resolutions

A Financial Resolution is a method of bringing changes to taxation into immediate legal effect on a temporary basis pending full enactment in a Finance Act. This is allowed under Section 2 of the Provisional Collection of Taxes Act 1927. Typically, whilst the government can introduce an FR at any time, FRs are associated with budgetary measures announced on Budget Day which are required for the purpose of making proposed taxation measures effective immediately. This is especially relevant to changes in such matters as tax rates and tax thresholds with a view to mitigating market distortions and/or tax planning opportunities. The drafting and preparation of FRs is a principal concern for RLS for Budget Day. FRs may also need to be moved just prior to Committee Stage of the Finance Bill (these will be discussed in more detail in Chapter 9).

A Financial Resolution is required whenever a charge is imposed upon the people. A charge may take the form of either:

1. the imposition of a new or increased tax, or
2. a reduction in, or repeal of, or restriction of a relief from tax.

If the charge to be imposed on the people will impact at any time before the Finance Bill becomes law a FR governing the charge will have to be passed by Dáil Éireann before midnight on Budget Day to come into operation either:

- (a) with immediate statutory effect;
- (b) with effect prior to the passing of the Finance Act.

With regard to (a), FRs which give effect to changes relating to excise duties must be passed before midnight on Budget night as that is the time at which they will come into force.

The position at (b) would generally arise in relation to income tax which operates for a tax year commencing on 1 January, and to VAT which operates for two-monthly taxable periods commencing on 1 January. However, the effect of the EU Semester largely obviates the need for any such considerations and it is anticipated this will have the effect of scaling back the numbers of Budget Day FRs required in future years.

The Drafting of Budget Day Financial Resolutions

Budget Day FRs must be treated like any other piece of fiscal legislation and comply with the full legislative demands of the measure as it ultimately appears in the Finance Bill. The drafting is undertaken by the branch in RLS that has responsibility for the drafting of legislation on the tax or duty covered by the FR. RLS should as necessary consult with other areas in Revenue that are responsible for the administration of the tax or duty covered by the FR or that may be affected by its terms.

Once the draft of the FR has been finalised within Revenue it is sent to the OPC together with an explanatory note providing a general description of what the draft FR is designed to achieve. If necessary, a more detailed description of the effect and purpose of each particular provision is also provided. Where a Budget Day FR

would include a financial amount or a percentage figure, it is not necessary for the OPC to know the amount or the figure and it can be settled by OPC with a blank for the amount or figure. However, if the context of the resolution requires, it may be necessary for OPC to know if the result would be an increase or a decrease in an existing amount or figure.

As for all other legislation, FRs must be officially stamped by the OPC.

The FRs must be available in printed form in time for the Budget. This is usually arranged jointly by the Finance FR Co-ordinator and RLS Co-ordinator. The printer's proofs of the FRs require rigorous checking jointly by Finance/RLS before final sign-off.

Format of Budget Day Financial Resolutions

Budget Day Financial Resolutions have their own distinct format – the following points are worth noting:

- When Dáil Éireann passes a FR it is resolving that a certain action be taken. Each provision (paragraph) of a Budget Day FR commences with the relative pronoun 'That'.
- Where an Act of the Oireachtas is referred to in a Budget Day FR the number of the Act must be quoted in parentheses after the reference. If there are a number of references to the one Act in the same Resolution, the number of the Act need only be quoted after the first such reference.
- Every Budget Day FR, other than the General Resolution, should contain the following provision:

'It is hereby declared that it is expedient in the public interest that this Resolution shall have statutory effect under the provisions of the Provisional Collection of Taxes Act 1927 (No.7 of 1927).'

This is the provision that gives the FR the same statutory effect as if it were contained in an Act of the Oireachtas.

The General Resolution

With one exception Budget Day FRs relate to specific taxation measures. The exception in question is what is known as the General Resolution. The Department of Finance drafts it and agrees it directly with the OPC.

The General Resolution always takes the format:

'That it is expedient to amend the law relating to inland revenue (including value-added tax and excise) and to make further provision in connection with finance.'

The General Resolution is essentially procedural in nature; its purpose is to initiate, or provide a platform for, the general debate on the Budget. No specific briefing is required by the Minister for Finance for it.

Procedures in Dáil Éireann for Budget Day Financial Resolutions

Following the Budget speeches and debate in the Dáil the respective FRs are moved by the Government in the order in which they appear on the order paper. Generally, those relating to excise duty appear first because the excise FRs must be passed before midnight. These are usually followed by the FRs relating to Value Added Tax, Income Tax, Corporation Tax and Capital Taxes, in that order. The last Resolution to be moved is the General Resolution.

Each FR is normally debated by the Dáil. Any Deputy can contribute to the debate and questions can be asked of the Minister ranging from the policy behind the Resolution to the technical meaning of the wording of the Resolution. When the debate on a Resolution is finished or the debating time allotted to it under the order of business has expired (usually the order of business for the Dáil on Budget Day decrees that FR other than the General Resolution must be taken before a particular time on that day) the Ceann Comhairle will put the question to the Dáil.

The defeat of a Budget Day FR effectively represents a vote of no confidence in the Government. This would give rise to a political difficulty and it could ultimately result in the Taoiseach asking the President to dissolve the Dáil and the calling of a General Election. This happened in 1982.

Briefing Notes for Budget Day Financial Resolutions

Because of the often contentious nature of the debate on Budget Day FRs it is necessary to prepare detailed briefing on each FR. This briefing normally consists of a Speaking Note (setting out in broad terms what the measure is intended to achieve) and a Detailed Note (describing the purpose and effect of each particular provision of the FR providing useful background and statistical information on the cost or yield implications).

It is also necessary for the Revenue staff responsible for the drafting of the FRs to sit in the 'bull-pen' in the Dáil chamber alongside their Finance colleagues in order to be in a position to advise whichever member of Government is taking the FRs on any points that may arise during the debate. To this end it is sometimes advisable to prepare what is known as a 'back-up brief' in regard to specific issues that may be contentious and/or controversial. Finance officials will usually take full responsibility for such a brief, however RLS will endeavour to support the material as required.

Provisional Collection of Taxes Act 1927

Financial Resolutions are given statutory authority under the Provisional Collection of Taxes Act 1927. Under Section 2 of the Act whenever a Resolution is passed by Dáil Éireann resolving:

- (a) that a new tax specified in the Resolution be imposed, or
- (b) that a specified permanent tax in force immediately before the date on which the Resolution is expressed to take effect (or, where no such date is expressed, the passing of the Resolution by Dáil Éireann) be increased, reduced, or otherwise varied or abolished, or
- (c) that a specified temporary tax in force immediately before the date the Resolution is expressed to take effect (or, where no such date is expressed, the passing of the Resolution by Dáil Éireann be renewed) whether at the same or a different rate and whether with or without modification as from the date of its normal expiration or from an earlier date or be discontinued on a date prior to the date of its normal expiration,

and the Resolution contains a declaration that it is expedient in the public interest that the Resolution should have statutory effect under the provisions of that Act, the Resolution shall, subject to the provisions of that Act, have statutory effect as if contained in an Act of the Oireachtas.

Budget Day FRs always contain such a declaration and, as such, once passed by Dáil Éireann, have the force of law. However, as mentioned in Chapter 2, it is important to note that Section 4A of the Provisional Collection of Taxes Act 1927 was amended by way of Section 2 of the Appropriation Act 1991. This arose out of the necessity within the procedures of Dáil Éireann to allow that the Dáil sits on Fridays. Without having to elaborate on the historical nuances of Dáil procedures in this text, suffice to say the amended Provisional Collection of Taxes Act 1927 provides that a Financial Resolution under that Act will cease to have statutory effect upon the happening of the earliest of the following events:

- (a) subject to section 4A of this Act, if a Bill containing provisions to the same effect (with or without modification) as the Resolution is not read a second time by Dáil Éireann-
 - (i) where Dáil Éireann is in recess on any day between the eighty-second and eighty-fourth day after the Resolution is passed by Dáil Éireann, within the next five sitting days of the resumption of Dáil Éireann after that recess;
 - (ii) in any other case within the next eighty four days after the Resolution is passed by Dáil Éireann;
- (b) if those provisions of the said Bill are rejected by Dáil Éireann during the passage of the Bill through the Oireachtas;
- (c) the coming into operation of an Act of the Oireachtas containing provisions to the same effect (with or without modification) as the Resolution;
- (d) subject to section 4A of this Act, the expiration of a period of four months from the date on which the Resolution is expressed to take effect or, where

no such date is expressed, from the passing of the Resolution by Dáil Éireann.

Section 4A referred to above provides that any period of dissolution of Dáil Éireann shall be disregarded for the purposes of the above mentioned time limits.

Budget Day Financial Resolutions – aspects in regard to taxation

Normally Financial Resolutions are required only where a tax is increased or a relief is reduced. There is no requirement under Dáil Standing Orders for a Financial Resolution in connection with reliefs such as increases in income tax personal tax credits or reductions in rates of income tax. This is so even though effect will be given to the increased tax credits or reduced rates of tax under PAYE as on and from 1 January. Once income tax reliefs are announced by the Minister for Finance on Budget Day the certificates of tax credits and standard rate cut-off point for the coming tax year are, where possible, adjusted to include the reliefs announced. However it should be noted that the proposed reliefs are granted on a provisional basis only: if changes to the proposed reliefs are made during the course of the Finance Bill through the Oireachtas, effect will be given to those changes by the issue of revised certificates of tax credits and standard rate cut-off point.

There are occasions when a Financial Resolution with immediate statutory effect may be desirable in connection with a proposed relief. The use of a Financial Resolution for this purpose is permissible since section 2(b) of the Provisional Collection of Taxes Act 1927, applies to Resolutions providing ‘that a specified permanent tax be increased, reduced, or otherwise varied, or be abolished’. The use of such measures is rare, usually arising from extraordinary circumstances and often requiring considerable political and procedural intervention. There is no requirement in the 1927 Act that a Financial Resolution be effected on Budget Day itself. However, the great advantage of a Budget Day FR is that the political machinery is in place for its passage through the Dáil on the day.

In the instance where FRs are used to commence measures from Budget Day, it is important that Revenue is fully prepared in advance ready to publish corresponding respective guidance and advices.

Pre-Budget action required by Revenue

In sharp contrast to previous practice, under the new EU Semester process the most important pre-Budget task to be undertaken by Revenue is the preparation of the Finance Bill. This may seem very odd, but due to the nature of the printing requirements, and also the much reduced timeframes involved (whereby the Bill must be published in a much shorter timeframe following the Budget), it is necessary to produce the main elements of the drafting of the bill in advance of Budget Day.

Chapter 7

Preparation for the Finance Bill

Preparation for the Finance Bill

In the wake of the Budget all attention is focused on the task of preparing the Finance Bill.

In the the new EU Semester environment the timeframe between Budget Day and publication of the Finance Bill has been greatly reduced. This makes it imperative that most decisions on the legislative requirement of the bill are prepared well in advance of Budget Day. In addition, any late or unexpected decisions arising directly from the Budget itself will nonetheless have to be implemented for the Finance Bill, either for publication or for introduction at Committee or Report Stage. This makes it even more important to have as much work done on items not wholly dependent on the Budget Day announcement prepared in advance.

Finance Bill Tracking List

As mentioned in Chapter 3, the Department of Finance and RLS manage the preparations for Finance Bill by use of the FB List. This is the key spreadsheet listing items that may be subject of legislative action in the Bill. This list is created early in the new year and it is the subject of the annual Finance/RLS FB Meetings held usually prior to Easter. The meetings are conducted at Assistant Secretary level between the Finance Budget Division and each respective RLS Division involved in the bill. Once agreed, the Finance and RLS co-ordinators work closely in monitoring progress on the list, issuing updated lists on a regular basis to all drafters. The FB List is an important document which must be treated confidentially and should not be widely circulated.

Contact with Department of Finance and RLS Co-Ordination

At all stages of the preparation for the Finance Bill continuous communication is maintained between the relevant RLS Branches and their respective contacts at the Department of Finance on all matters relating to the Bill's progress. This communication is increasingly facilitated by means of electronic transmission. Communications between Revenue and all departments are now fully encrypted and continuously monitored for security and confidentiality for all.

The process of bringing the work of all these contacts together for the purposes of actually producing the Bill is the task of the co-ordination function. Each of the principal areas of government involved with the FB retain a dedicated co-ordinator for this purpose (Finance, OPC, Bills Office, RLS). In essence, this amounts to the management of all the various parts of the Bill so their progress through the legislative process can be tracked/monitored and steered toward successful enactment. The co-ordinators are responsible for all communications, the setting of timelines, and overseeing the overall facilitation through all stages of the process. The value of establishing and maintaining good and clear communications between all co-ordinators cannot be over-emphasised.

The Co-Ordination function does not involve itself with the legislative details of the respective sections of the Bill – this is the business of the specialised branches. The broad elements of the task are as follows:

General:

- Establish clear and effective lines of communication between RLS and all other corresponding dedicated FB co-ordinators, each in Finance, OPC, Bills Office, and printers. This includes regular updating of all contact lists.
- Liaise with Department of Finance on the management of their FB List.
- Arrange the FB Timetable and set out the program of work required to meet the demands of each stage of the Bill.
- Notify all parties in good time of all scheduling demands and other matters affecting the effective conduct of the bill.

The Budget:

- Clarification of Finance requirements for Budget Day FRs.
- Ensuring Budget Day FRs are submitted to the OPC for stamping within the specified times.
- Management of printers proofs of FRs and the delivery of proofs to Finance Co-Ordinator after the proof-reading process.
- Collating of FRs and associated briefing for Commissioners in good time for the Ministerial speeches.

The Finance Bill:

- Development and management of the FB List.
- Organisation and conduct of the formalized annual RLS/Finance FB Meetings process.
- Development and distribution of the FB Timetable.
- Monitoring of agreed progress deadlines for all submissions in line with FB List.
- Establishing effective lines of communication with all external agencies including agreement on procedures and deadlines.
- Ensuring drafters submit their drafts to the OPC within the specified times.
- Management and distribution of printers proofs.
- Collation of corrections and management of the returns process with printers.
- Delivery of all items for the FB in good time as agreed.
- Delivery of consolidated final agreed Explanatory Memorandum.
- Collation of all sections, Speaking Notes, and Ministers Notes for Main Brief and Amendments Brief as required at each stage.
- Liaison with Bills Office in respect to all stages, including FRs, amendments and scheduling.
- Arrangements for Clerk's Corrections.
- Sign-off on certification of the vellum proof with the Bills Office.
- Effective implementation of post-enactment follow-up.

Attorney General's Office and the Revenue Solicitor

Complex legal issues may arise in the course of drafting legislation that may require RLS to seek the advices of higher legal authority. Reference can be made to the Revenue Solicitor's Office that may directly seek the opinion of counsel. The matter may also need to be referred to the Attorney General's Office for consideration (see Chapter 4).

Provisions that appear in every Finance Bill

Two sections that appear in every Finance Bill are the Care and Management of Taxes and Duties and the Short Title, Construction and Commencement sections. These are located in the Miscellaneous Part of the Bill and are invariably the final two sections each year. They are inserted in the Bill by RLS.

The Care and Management provision formally places all taxes and duties imposed by the Act under the care and management of the Revenue Commissioners.

The Short Title section gives the short title of the Act: this is not to be confused with the Long Title (referred in Chapter 2) that appears in bold capitals just before section 1 of each Finance Act. It lists the various basic provisions (Income Tax Acts, VAT Acts, etc.) from which each Part of the Bill is to be construed.

Commencement dates for the various parts are (as necessary) stated.

In addition, a number of other provisions may be inserted into the Finance Bill directly by Department of Finance, where RLS has no direct involvement. Examples are the Capital Services Redemption Account or particular Finance business in regard to areas over which it has direct responsibility to do with banking or the administration of certain services. In such instances, Finance handle the relationship with OPC independently and simply provide the RLS Co-ordinator with respective copy of stamped sections and briefing material for the briefs as necessary.

Contents – (previously 'Arrangement of Sections')

The Contents list of the bill was formerly designated the 'Arrangement of Sections'. RLS takes responsibility for its creation which takes shape during the course of the lead up to publication. It sets out the order of the measures in the Bill and signals the respective taxhead category to which each section applies. In recent years, RLS manages this function in conjunction with all parties and it is not uncommon for sections to be moved within the Bill as appropriate. This should be done at the earliest possible stage because any reorganisation of sections creates displacement for all with corresponding difficulties for cross-referencing and other alignment issues. Unfortunately, the same challenges arise on the insertion of official Committee and/or Report Stage Amendments. RLS send the OPC a copy of the proposed Contents indicating the Parts/Chapters into which the different sections should fall. These pages are not technically part of the Bill, but if there is any doubt about where a particular section should be placed, or under what Part/Chapter, it is advisable to seek the decision of the OPC. This is another instance of how the Finance Bill is unique in the drafting function provided by the OPC: While all other Bills are stamped in their entirety by the OPC at one point in

time, the Finance Bill is stamped piecemeal over an extended period as and when each section or schedule is settled. On this basis, the OPC does not stamp the bill as a single item but the appropriate order of Contents is nonetheless within its competence to determine, if necessary. In practice, the Contents is resolved by general agreement between all concerned.

Table of “Acts Referred To”

This is a listing by their short titles of all Acts (including previous Finance Acts) referred to in the Bill. It also includes groups of Acts referred to in the text of the Bill by their collective citation (e.g. Value-Added Tax Consolidation Act 2010).

It requires a check of each section of the new Bill for such references. These Acts are listed once (even if referred to a number of times throughout the Bill) and normally in alphabetical and date order. There are two special cases to note on the alphabetical listing:

- The first case is where the difference in the title is only the date (e.g. Finance Act 1952, Finance Act 1960) then they are listed alphabetically and by date.
- The second case to note is that where an Act has “No. ___” in its title and there are similar entitled Acts (with or without “No. ___”) enacted before or after it (e.g. Finance Act 1981, Finance (No. 2) Act 1981, Finance Act 1983); in that case it will appear chronologically as if the “No. ___” was not there (e.g. in the above example, immediately after Finance Act 1981).

The Explanatory Memorandum

When the Finance Bill is published it is accompanied by a separate document called the Explanatory Memorandum. This contains a short commentary on each section of the Bill to provide a basic summary of what it’s about and why it is necessary. The Explanatory Memorandum is usually prepared by RLS drafters in conjunction with Finance. It is compiled jointly by the co-ordinators and transmitted as a single document to the printers.

In recent years, it has been the practice that no further version of the Explanatory Memorandum is prepared to reflect later amendments in the bill on the basis that the House will have had ample opportunity to engage all issues within the new intense legislative period, including media coverage and debates.

Proofs and Proof Reading

All printers proofs are prepared electronically and pdf’s are relayed by the co-ordinators, including specific timelines for reply.

Primary responsibility for the proof-reading and checking of stamped material rests with the relevant respective branch. In addition, Finance and RLS branches undertake checking separately. Any corrections required must be marked up in red ink on the actual proofing page (observing the international standard proof-correcting symbols illustrated in Chapter 7) and this page should be provided to the co-ordinator within timelines for reply. The RLS co-ordinator consolidates all corrections and marks up the formal ‘return’ by pdf copy to the printers seeking correction/revision. This will be followed quickly by a revised proof for checking over.

Strictly speaking, effective proof-reading should be organised using a reader and two checkers, rotating occasionally and taking breaks as appropriate. However, the manner of checking is the decision of each branch on its own terms.

A list of editing symbols used in the proofing process appears on the following page.

Proof-reading Correcting Symbols

Instruction	Textual Mark	Marginal Mark
Insert the matter indicated in the margin		
Delete, take-out	 (through character) (through text)	
Set in or change format		
Substitute or insert punctuation		
Start new paragraph		
Run on to next paragraph		
Insert space between		
Reduce space between		
Correct vertical alignment		
Correct horizontal alignment		
Indent		
Cancel Indent		
Leave unchanged - correction made in error		

The importance of the proof reading exercise cannot be over-emphasised. Errors that are not picked up and corrected in the proof reading of the bill before publication will have to be put right by way of official amendments moved by the Minister at the Committee and/or Report Stage of the bill.

A few further points about proofs and proof reading are worth mentioning:

- References in the Bill to other provisions of the Bill are printed in italics. The use of italics helps to highlight the cross-references in the text.
- Care must be taken to ensure that cross-references to other sections or to parts of the Bill, e.g. subsections or other sections are correct. This is an important point to check - especially when a section (or sections) is added to, dropped from or relocated in the Bill.
- A check should be made to ensure that the numbering of the sections in the Contents pages of the Bill corresponds with the numbering appearing in the body of the Bill.
- Similarly, the title of each section as set out in the Contents pages should be checked against the title in the body of the bill.
- The early proofs (especially, say, the first and second) should be check read using the OPC's stamped copy as the basic document. The electronic stamped version (as settled directly between the OPC and the drafter) should suffice for this purpose. However, the co-ordinators retain a formal direct copy of each actual stamped section and this can be supplied to drafters on request.

While the most demanding aspect of the proof reading process occurs prior to the publication of the Bill, there is a need for further checking following the completion of each stage of the Bill through the Oireachtas. Thus, the Bill must be checked again as follows:

- as passed in Committee Stage;
- as passed by Dáil Éireann;
- as passed by both Houses of the Oireachtas.

Any amendments made to the Bill at the Committee and Report stages in the Dáil must be correctly incorporated into the Bill. Consequential changes arising from these amendments must be watched for and carried into the text of the Bill.

The final proof of the Bill, i.e. as passed by both Houses, will be on vellum. It is a vellum copy of the Bill as signed by the President that becomes the Act. The co-ordinators formally sign-off on the certification of the final vellum copy in person at the Bills Office.

e-Cabinet and e-Legislation

New technology will continue to broadly influence the means by which the legislative process functions at all levels of government and administration

Advances in communications technology are constantly reflected in the initiatives under way on e-Cabinet and e-Legislation. These are implemented incrementally. However, especially as it affects the legislative process and for the purpose of this guide, the essential nature of the legislative process itself remains the same. New technology will facilitate faster and more direct communications, particularly significant in relation to the job of publication and printing of legislation, but the core nature of the substantive role of RLS and the drafting function will, if anything, be reinforced.

The Bills Office

The Bills Office becomes the temporary custodian and owner of the bill in the period from publication to its eventual enactment. That Office undertakes yet another forensic independent checking of the bill, seeking to establish that all drafting conventions are in order, including cross-referencing and such matters as the accuracy of the list of 'Acts referred to' and consistencies of format and text. It will notify co-ordinators and/or drafters of corrections required (although it is important to note it will not make any corrections itself since these have to be processed by the drafters who must separately seek the official sanction of the OPC for any changes to the Bill, and stamped accordingly). The Bills Office will also read the bill to determine any requirement for Committee Stage FRs. In addition, the bills office undertakes the conduct of the amendments process. This involves preparing and issuing lists of both opposition and official amendments for publication within strict timeframes as determined by the rules of the Oireachtas for the Committee, Report and Seanad stages, and applying amendments in each iteration of the bill as subsequently agreed.

On publication of the bill, the RLS co-ordinator should immediately provide the Bills Office co-ordinator with a detailed list of name/s and direct contact numbers of the drafter of each section in the bill as set out in the Contents.

Memorandum for Government on the Finance Bill

This is a document prepared by the Department of Finance. It is presented by the Minister for Finance to his Cabinet colleagues and seeks formal permission from Government to introduce the Finance Bill. It outlines the main provisions to be contained in the Bill and deals especially with new topics that may have emerged since the Budget or with items announced in the Budget to which there have been changes.

White Print of the Bill

This is the draft version of the Bill that is considered by Government at a meeting or meetings held shortly before publication. It is normally printed following the corrections at late proof stage by which time the text will be in reasonably good shape. In considering the draft Bill the Government will also have the

Memorandum for Government together with the Explanatory Memorandum to the Bill. The Government will decide at this stage whether any proposed measures are to be dropped or modified and care will have to be taken that these decisions are reflected in the subsequent proofs of the Bill.

Chapter 8

**Publication of the Finance Bill and the Initial
(First and Second) Stages in Dáil Éireann**

Publication of the Finance Bill and the Initial (First and Second) Stages in Dáil Éireann

The First Stage of a Bill is to get the approval of the House concerned to have it printed and published. However under Standing Orders of both Houses, certain Bills, including almost all Government Bills, do not need to get this approval. The Finance Bill is published ‘as initiated’ on the date fixed by the Department of Finance as indicated on their Timetable. The Finance Bill is always printed on green paper (colour for Dáil Bills) since, as a Money Bill, it has to be initiated in the Dáil. The actual printing of the Bill and its accompanying Explanatory Memorandum takes place on the day/night before publication. The Bill is circulated to Dáil Deputies and Senators and made available on the Oireachtas website.

Publication of the Bill typically attracts considerable interest in the media and amongst tax practitioners and accountants. This is because the Bill often contains items, frequently of a technical nature, which were not announced in the Budget. Anti-avoidance will usually appear for the first time at publication stage. Also the Minister for Finance may have decided to alter or even not to proceed with items announced in the Budget. The publication gives rise to queries of varying complexity for RLS from members of the public, journalists and accountants/tax practitioners etc. Replies to enquiries are confined to explaining the provisions as published in the Bill. RLS provides factual information only on the Bill and does not enter into discussion concerning the underlying policy of the Bill’s provisions as this would pre-empt the forthcoming debates in the Oireachtas.

The Second Stage Debate

On the appointed date, which is usually within a week of the publication of the Finance Bill, the Minister for Finance presents the Bill to Dáil Éireann. The Minister commences the proceedings by moving a motion as follows:

I move: ‘That the Bill be now read a Second Time’

This may be somewhat confusing as the Bill has not been ‘read’ in the Dáil for the ‘First Time’ (the reading stages for a Bill reflect the Westminster parliamentary model; first stage is the approval of the House of Parliament concerned to have the Bill printed and published on the basis of the long title – as read out by the Speaker of that House; in the Dáil and Seanad certain Bills, including almost all Government Bills, do not need this approval to publish).

The Minister is then given the floor to outline the contents of the Bill in the Second Stage speech. The Minister will usually preface the speech by stating that the purpose of the Bill is to give legislative effect to the provisions in the Budget as well as to provide for other legislation that the Government has decided on. The Minister will sketch the general economic background to the Bill before going on to outline in broad terms the main provisions of the proposed legislation. This speech is prepared by the Department of Finance but may be sent to Revenue for checking. The Minister speaks for up to 30 minutes and has 15 minutes to reply.

Following the Minister's speech Deputies from all sides of the House contribute to the Second Stage debate. This debate can often amount to a re-run of the Budget debate.

Revenue officials do not normally attend the Second Stages debate. However, it may be helpful for one person in a respective RLS branch to monitor the debate as it relates to their sections by following proceedings on the Oireachtas website. This can be useful for two reasons in particular:

1. It serves to highlight areas of contention amongst Deputies which can help RLS to concentrate Committee Stage briefing material where it is likely to be most needed, and
2. Deputies may announce their intention to put down at Committee Stage amendments to particular sections of the Bill and this enables RLS to prepare material in advance for reply to the points made.

At the end of the period of time allocated to the debate the Minister for Finance makes a short concluding speech to the Dáil. He thanks those Deputies who have contributed to the debate and then addresses any criticisms made by the Opposition of the Bill's provisions.

Transcripts of all Oireachtas proceedings are published next day on the Oireachtas website.

Conclusion of the Second Stage

When the Minister for Finance concludes the Second Stage Debate the Ceann Comhairle 'puts the question' to the Dáil as follows:

'That the Bill now be read a second time'

The Dáil may or may not vote on the question but when the motion is carried the Ceann Comhairle will ask the Minister for Finance when it is proposed to commence the Committee (Third) Stage. The Committee Stage is then 'ordered' to commence on that date. The order of the Dáil usually requires the Committee to consider the Bill in accordance with a time-limited schedule.

Chapter 9

The Committee Stage

The Committee Stage

This is the Third Stage of the Bill and is often considered the most important as it is open to amendment. Committee Stage can be considered by the whole Dáil sitting as a committee; however, the normal practice at present is for the Finance Bill to be referred to the Select Committee on Finance and the Public Service for consideration. This consists of government party members and opposition party members of the House and invariably includes the Finance spokespersons of the various parties.

The Committee Stage is dealt with in the Standing Orders of Dáil Éireann, specifically numbers 120 to 126 which can be summarised as follows:

- When the Bill has been read a Second time it will be ordered to be considered in Committee;
- Proposed amendments are to be notified to the Bills Office not later than 11a.m. four working days before the Bill is to be considered;
- In Committee a Bill must be considered section by section;
- Any section in a Bill may be amended and new sections may be inserted.

The Committee Stage provides Committee members with the opportunity for a detailed examination and discussion of every provision of the Bill. While this tends not to happen in practice in the case of the Finance Bill, the recommended approach for RLS to the preparation of the ministerial briefing is that every aspect of the Bill may come up for debate and should be provided for accordingly.

It is fair to say the Committee Stage of the Finance Bill represents some of the most crucial and demanding aspects of the work of RLS. It gives rise to the preparation of a large amount of briefing material that may not only be extensive but also may have to be prepared at very short notice.

Financial Resolutions in advance of Committee Stage

In addition to Financial Resolutions (FRs) taken on Budget Day other Financial Resolutions imposing or increasing a charge on the people or withdrawing a relief are moved just before the Committee Stage of the Finance Bill. These Resolutions are essentially procedural in nature since their purpose is to comply with Standing Orders which stipulate (No. 148(2)) that the Committee Stage of a Bill which involves, even incidentally, a charge upon the people shall not be taken unless a motion approving the charge has been passed by the Dáil. Please note, CSFRs are often referred to as 'sketch' resolutions. They do not entail the detailed explication as would normally characterise Budget Day FRs.

CSFRs relate to measures which do not need immediate statutory effect since,

although they increase tax liability, they are not effectively applied until they come into force on the passing into law of the Finance Act. CSFRs are adequate to cover even measures which on the passing of the Finance Act are expressed to have come into operation on the previous 1 January - the beginning of the income tax year.

After publication, the Bills Office systematically scrutinize the Finance Bill to determine which sections of the Bill give rise to CSFRs. Contact is then made with the relevant respective RLS drafter and the sections needing such CSFRs are agreed. Drafts of the FRs are prepared and sent to the OPC together with a brief note explaining their purpose. When these are agreed the OPC will stamp the FRs and arrange for them to be processed accordingly.

CSFRs must be sent to the Bills Office, at the latest, by close of business on Tuesday of the week before Committee Stage commences because they must be translated into Irish and placed on the Order Paper for Thursday. This is the last opportunity for the Dáil to agree them before Committee Stage begins.

A typical example of a 'sketch' CSFR will run along the following lines:

‘That section W of the Finance Act 2003 (No.3 of 2003), which ...(state what section W does).., be amended in the manner and to the extent specified in the Act giving effect to this Resolution.’

There is no fixed or rigid format that must always be followed in their drafting. However, it is crucial that the nature of the charging measure is brought to the attention of the Dáil by way of the CSFR.

A brief is prepared for the Minister on the CSFRs. This comprises the text of each Resolution and a short note mentioning the section of the Bill to which it refers. It gives the gist of that section in a sentence or two and if there is a figure of yield from the measure that would also be stated. Generally, CSFRs are taken in the Dáil without debate. It is necessary, however, to have a brief so that the Minister is in a position to respond if asked to explain what a particular Resolution is about.

Please note, FRs can also be necessitated by Report Stage Amendments.

Ministerial Briefing for Committee Stage

A wide-ranging array of briefing material is prepared for the Minister in connection with the Committee Stage of the Finance Bill. This material is divided into a number of separate briefs which are described in the following paragraphs.

The Main Brief

The Main Brief contains notes on every section sequentially of the Bill and is seen as the most important element in the overall briefing process.

The format (Times New Roman, 14pt, all headings bold, all text justified), is as follows:

- the section number appears at the top right corner of the opening page;
- the title of the section is then given;
- the opening note is the Speaking note;
- details of cost/yield (if any) and numbers of taxpayers affected by the

particular section are given in a separate paragraph;

- If necessary, a Detailed Note supplements the speaking note with a more comprehensive analysis.

The Speaking Note should provide a succinct general explanation of what the section is about and why it is necessary. It is the speaking note that the Minister will read out to the Committee.

If some major change to the tax system is being proposed a special longer speaking note should be considered.

The cost/yield/taxpayer numbers may be included in the Speaking Note, especially if they are of a relatively straightforward nature. If the figures require a more comprehensive brief, consideration should be given to the additional preparation of a Detailed Note.

A Detailed Note, which usually starts on a separate page immediately following the Speaking Note, involves describing every aspect of the section. It should cover each subsection/paragraph/subparagraph/clause.

Committee Stage notes are usually prepared jointly between Finance/RLS are the earliest opportunity in advance of the date set for the Committee Stage. Often, the Minister may wish to become familiar with their contents beforehand.

Occasionally it may happen in the preparation of the Committee Stage notes that a particular unforeseen weakness or shortcoming in the proposed legislation becomes evident. If so, corrective action can be taken by way of an appropriate amendment and the intention to do so may be expressed within the notes.

Back-up and Statistical Briefing

An effective speaking note and detailed note should suffice for briefing requirements where provisions are regarded as uncontentious or unlikely to give rise to significant debate.

By exception, officials actively seek to anticipate the debate that may arise in respect of a given provision and prepare as necessary. This preparation should include additional briefing, draft Q&As in certain circumstances, and in all cases, statistics that may be relevant to the discussion.

The preparation of additional briefing notes and Q&A's for a Bill must be carefully examined from as many angles as possible for clues as to what might be raised in the debates. Any provision that contains conditions related to e.g. income levels, exclusions of certain categories of persons, etc., can be expected to trigger criticism or calls for relaxation of whatever conditions are set down. Views from specialist bodies or lobby groups on provisions of the Bill may give a lead as to what to expect. So too would representations received by the Minister, the Department of Finance or Revenue from professional bodies such as the Law Society or the Irish Tax Institute and other interested parties. It goes without saying that not all issues can be anticipated and these have to be dealt with by the officials present for the debate to the best of their ability. Briefing notes should be:

- succinct and to the point;
- presented in bullet-point format if possible;

- coherent and understandable.

The use of a highlighting marker when passing notes to the Minister during the debates may be useful in drawing attention to particular aspects of the note.

This brief has grown in importance because of an emerging trend whereby topics not directly arising from particular provisions in the Bill have been introduced by members in the course of the debates, oftentimes with little advance notice. Moreover, due to the increasing specialty of many provisions it is important to ensure all briefing is adequate to the demands of a more complex debate. The availability of additional brief thus requires careful consideration with a view to advancing the best case for the ministerial proposal and addressing all potential avenues of challenge.

However, given the volume of briefing material that can be generated, consideration should be given to a sense of proportion when it comes to its physical manifestation. A number of aspects may be taken into account:

- All FB stages are fundamentally conditioned by a very tight schedule for completion. The committee is driven by the amendment list but it is imperative to approve all sections and there is latent pressure on all parties to drive the process to completion.
- Oftentimes, less is more: too much data can be unwieldy and difficult to extract in real-time committee proceedings.

However much it is desirable to have the totality of information on any provision immediately to hand, the availability of too much material on the front desk can be difficult to manage and it may work against a competent and timely delivery. For this reason, it is perhaps useful to retain the back-up brief ready to hand ‘behind’ the front desk by officials who are sufficiently familiar with them so as to supply them promptly to the front desk if necessary. That is to say, this back-up brief should not form part of the official brief: it is supplementary. Similarly, in the instance where detailed Q&As are prepared (specific to high-profile matters only).

Revenue’s Statistics & Economic Research Branch can provide, where data are available, statistical information in relation to the measures contained in the Bill or additional topics that may be called for in the course of the debates. However, RLS branches are responsible for anticipating these needs and requesting the information be prepared by Statistics & Economic Research Branch. RLS branches also need to be mindful that given other work ongoing, requests made as early as possible are more likely to be met.

Planning Division also provide an important source of data for RLS, especially in regard to consideration of the practical application of tax policy proposals i.e. their ‘implementability’.

Committee Stage Amendments

The Committee Stage of the Finance Bill presents the first opportunity for amendments of the Bill to be proposed. These amendments may be either (a) Ministerial (Official); or (b) Opposition (Unofficial). Both are subject to strict submission deadlines to the Bills Office which will be notified in detail by the

co-ordinators. Opposition amendments are tabled in the name of the Opposition Party spokespersons on the Committee but all Deputies who are members of the Committee or are nominated as a substitute for a member of the Committee in the House may also put down amendments. Any other member of the Dáil has the right to attend and take part in proceedings without the right to move amendments.

Ministerial Amendments

Official Ministerial amendments arise for a number of reasons. The Government may have decided that certain provisions of the Bill as initiated are to be modified either as a matter of basic policy or to take account of representations made in regard to particular measures. It may also be necessary to have Ministerial amendments to correct matters that have been discovered in the Bill as published. If there are doubts as to the likely effectiveness of a particular section or sections the opportunity afforded by the Committee Stage should be availed of to put matters right. In addition, it may be decided that it is more appropriate or desirable to await introduction of a new section or an amendment of a section in the bill at this later Committee or even Report Stage. This could be by design in order, for example, to restrict the opportunity for counteracting measures being taken by persons before enactment.

Ministerial amendments may also be required to correct any printing errors that were not eliminated from the proofs of the Bill before publication and which appear in the Bill as initiated.

Ministerial amendments are prepared in the same manner as legislation and must be agreed and stamped by the OPC in the normal way. It is important that the proofs of these amendments are checked with the same care as proofs of the Bill. If an amendment for which a stamped draft has been supplied by OPC is not moved or it is decided that it will not be moved, the OPC should be advised accordingly.

Opposition Amendments

Opposition amendments precede Ministerial amendments in the debate. Opposition amendments that impose or increase a charge on the people (or reduce revenue or withdraw an allowance) are not permitted. Such amendments will be ruled out of order by the Committee Chairman.

When details of the Opposition amendments are received from the Bills Office the first task is to go through them and form a view which of them should be ruled out of order. This decision is the Committee Chairman's job. The Bills Office (which is part of the Ceann Comhairle's Office) should be alerted as to the amendments which RLS considers are not in order. An amendment that is ruled out of order may nonetheless appear on the published list of amendments for debate at Committee Stage. However, at the commencement of the debate, and/or when such an amendment is reached in the debate the Committee Chairman will announce the ruling that it is out of order and it will not be discussed. The subject matter of an amendment ruled out of order may nonetheless arise in discussion on the section.

As already mentioned, copies of the transcripts of the Second Stage debate are

made available next day on the Oireachtas website. They are worth checking as they can give pointers to at least some of the items likely to become the subject of Opposition amendments.

Committee Stage Amendments Brief

A separate brief is prepared for the Minister in order to deal with the Committee Stage amendments. The Amendments Brief is supplementary to the Main Brief. The brief is prepared jointly by Finance and RLS. All Ministerial amendments and those of the Opposition that are in order are incorporated in this brief. The amendments are numbered in accordance with the final 'Numbered List' issued by the Bills Office. The debate is taken in this sequence in Committee. They follow the order of the sections in the Bill to which they relate, followed by the schedules and any proposed amendment to the long title. Occasionally amendments will be put down that do not relate to any particular section (for example, an amendment to introduce a new section) but it will be spelt out in the introductory wording to these amendments where precisely they are intended to appear vis-à-vis the existing sections. Listings such as 'Section – opposed' are not amendments – these are merely indications of intent to oppose a section. No briefing note is needed for such an item - the Main Brief will be used when that item is reached.

The format of the amendments brief is the same for all amendments. The title of the Bill, the stage (Committee) and the number of the amendment appear at the top of the opening page of the note. The text of the amendment is then quoted followed by the name of proposer (either An tAire Airgeadais, for Ministerial amendments or the Opposition Deputy for others).

A Speaking Note should be prepared for the Minister for each amendment. This sets out the purpose of the amendment and explains why (for a Ministerial amendment) it is being proposed or why (in the case of an Opposition amendment) the Minister will not be accepting it. A note is normally done for 'disallowed' amendments.

The preparation of notes for Ministerial amendments will generally be a reasonably straightforward matter in as much as they will have been known of well in advance. Opposition amendments are different in that they can present at a very late stage prior to submission deadlines. While up to a month may elapse between the publication of the Bill and the debate on the Committee Stage the amendments from the Opposition tend not to be sent to the Bills Office until a day or two before Committee Stage. All Opposition amendments must be put down by 11am the day before Committee (later only in exceptional circumstances and at the discretion of the Chairman).

Effective management of a large number of amendments at short notice demands very efficient use of the available staff resources. Amendments are allocated to the persons who have been most involved with the provision to which the amendments relate. Amendments not related to any specific measure in the Bill are allocated on a general basis.

How to deal with Amendments

The line to be taken in responding to certain amendments will be clear. Others

may not be so obvious. Research will have to be carried out urgently given the time constraints involved. It is important to remember that amendments to any given section in the Bill will be discussed in advance of that section - indeed it often happens that there will be no debate on the actual section but rather only on the amendment proposed to the section. This underlines the importance of preparing effective and comprehensive briefing on each amendment.

Certain Opposition amendments may be repeated from one year to another. However, in responding, it is important to ensure the continuing validity of any arguments that are being used again and to include new issues to reflect any changes in circumstances that may have taken place in the meantime. Additionally if an identical amendment was dealt with in a previous year it is advisable to vary the wording (though not the thrust) of the response so as to avoid a purely repetitious reply by the Minister.

Grouping of Amendments

Having amendments dealt with in groups obviates the need for a certain amount of briefing. The purpose of grouping is to avoid repetition of debate by ensuring that amendments addressed to related points are discussed together. Groupings are the prerogative of the Chairman and are usually determined by the Bills Office in discussion with Finance and RLS. Decisions on amendments are made in sequence. The Bills Office will notify a ruling on grouping to all parties shortly in advance of the commencement of proceedings. Grouping can be used for both Ministerial and Opposition amendments and involves related, alternative (consequential and cognate) amendments. Where as a consequence of an amendment a further amendment(s) is necessary, or if more than one amendment relates to the same thing, each of the amendments may be regarded as part of a grouping. One overall briefing note for the Minister on the grouping is sufficient as the group will be debated together. The agreed grouping should be reflected in the briefing note so that the Minister is aware of what is to happen.

Format of Committee Stage Debate

The first business to be disposed of is the Financial Resolutions (CSFRs). These are moved in the Dáil. Once these have been dealt with the Committee Stage debate proper begins in the allocation Committee Room located in the Oireachtas Millennium wing. Amendment Number 1 is moved by its proposer who speaks in support of it. Committee members may wish to contribute to the debate and when the various contributions have been made the Minister will outline reasons for opposing it. Occasionally an Opposition amendment may be accepted (often of a minor nature) perhaps as a way to make some small concession. This happens only rarely and the Minister may also decide to consider a proposal between Committee and Report Stages without giving any formal commitment.

When the subject matter of the amendment has been fully discussed, the Deputy who moved the amendment may withdraw it or may wish to have it put to the Committee. Unless withdrawn the Chairman will then put the amendment to the Committee. An amendment that is put at Committee Stage may be put again by way of a Report Stage amendment. This is the case even if the amendment is voted down at Committee Stage, or if it is not formally voted on. This is subject to the

amendment, or the subject matter to which it relates, having arisen at Committee Stage.

Attendance of RLS Officials

Officials from the RLS and Statistics areas of Revenue and representatives from the Department of Finance will be in attendance in the Committee Room during the debate to assist the Minister as necessary. Names of officials likely to be involved in attending the Dáil and Seanad are compiled by the co-ordinators in Finance/RLS who will in turn notify security personnel at Leinster House accordingly.

The seating area in the Committee Rooms reserved for officials and media is very limited and can accommodate only a small number at any one time. Other officials attending for upcoming sections can wait in the lower foyer and/or in a room nearby where proceedings may be followed on a monitor. In recent years, the presence of large numbers of officials in attendance has generated negative attention from both media and Members and therefore officials are asked to attend on a need only basis. Senior officers should be able to deal with all issues arising on the basis of the briefing material and it should not be necessary for them to require the presence of a retinue of staff. Many sections of any Finance Bill are never raised for discussion outside the amendments schema (and any outlier issues arising should be capable of address using the Main Brief). All proceedings can be actively monitored online via the Oireachtas website (for those needing to prepare to attend in person). This facility is also an extremely useful tool for everyone else to understand and follow the proceedings in a comprehensive way. Oireachtas proceedings are published on a next day basis online.

When an Opposition amendment to a particular section has been disposed of it will be proposed by the Chairman that the section in question stand as part of the Bill. This may be agreed to or the provision of the section itself may then be debated. At the conclusion of this discussion a vote may be called for on the section. At that point officials must leave and return again only when the result has been declared. The Committee then moves on to consider the next section of the Bill or an amendment to it if one is listed.

Duration of Committee Stage

The Government and Opposition Whips agree in advance the period over which the Bill is to be considered in Committee. With Budget Day now deemed to take place prior to 15 October for enactment prior to 31 December, Committee Stage will usually be taken in late November.

There is no specified number of days that must be devoted to the Committee Stage but it will normally extend over two or three days.

In an effort to try and ensure that the debate touches on all areas of the Bill an allocation of time or guillotine motion is frequently moved in advance of the Committee Stage. This is to the effect that by specified times the debate will have to conclude on specified parts of the Bill. When an agreed time is reached all amendments standing in the name of the Minister for Finance and any Opposition amendments for which the Minister indicates acceptance in advance (and only

those) relating to the sections in the specified Parts/Chapters of the Bill allocated to that period of time are agreed by way of a single question (the 'guillotine question') put at the conclusion of the debate. The advantage of these time allocations is they enable Deputies, if they so wish, to direct their attention to particular measures that they may be anxious to discuss. Allocation of time motions normally contain a provision that debate on a particular portion of the Bill (Chapters and Parts) shall conclude not later than a given time. Thus if debate on a portion of the Bill ends before that time the Committee can proceed to debate subsequent provisions. While this does not happen very often, officials should be aware of the possibility and bear it in mind when arranging to attend the Committee Stage.

It often happens that many sections in the Bill are not debated at all. This is probably inevitable given the number of provisions that have been a feature of recent Finance Bills coupled with the numerous amendments to the Bill that are generally tabled.

Chapter 10

The Report (Fourth) and Final (Fifth) Stages in the Dáil

The Report (Fourth) Stages and Final (Fifth) Stages in the Dáil

The Report Stage

The Report Stage is where the outcome of the Committee Stage is reported back to the Dáil for consideration. It is normal to have a fairly short period of Dáil time set aside for the Report and Fifth Stages.

At the Committee Stage the Bill is considered on a detailed section-by-section basis. The Report Stage allows the Dáil to look at the Bill generally. Amendments can be put at Report Stage and the debate will focus on any such amendments.

Report Stage Amendments

Any member of the House may table an amendment at Report Stage. These are published in advance by the Bill's Office. It is not unusual to find the same or similar Opposition amendments on the Order Paper as appeared at the Committee Stage but there are some restrictions on the repetition of amendments and certain amendments may be ruled out of order. This ruling is a matter solely for the Ceann Comhairle.

Guidelines on the kind of amendments that are NOT allowed are as follows:

- An Opposition amendment that creates a charge upon the public revenue or on the people (similar to the Committee Stage).
- Only amendments that arise from proceedings in Committee may be debated. The Report Stage amendment must have been the subject of discussion during the Committee Stage. Very often during the Committee Stage debate either the Minister or an Opposition Deputy will signal an intention to raise an issue by way of amendment during the Report Stage.

Recommittal of the Bill

In the event that an amendment which breaks those rules listed above is deemed necessary there is a mechanism in Standing Orders to facilitate this. This mechanism is by way of a motion for the recommittal of the Bill.

This motion will propose that the Dáil returns the Bill to Committee Stage for the purpose of discussing the proposed amendment. If the motion is successful this reversion to Committee will occur immediately. On disposal of the matter the Dáil will return to the Report Stage. This procedure is not a common occurrence in the context of Finance Bills and, in practice, could only occur where the Minister wished to put down an amendment that would otherwise be out of order. This only arises if a serious error or omission in the Bill is discovered too late for Committee Stage amendment and it is not permissible within the rules for Report Stage to put down a Report Stage amendment.

Drafting of Amendments and Report Stage Briefs

The list of amendments will be published on the morning of the Report Stage debate. It will be necessary to prepare a brief in respect of each amendment. The co-ordinators will discuss with the Bills Office any amendments likely to be ruled out of order. The order of the brief must follow the Order Paper. Amendments are listed on the Order Paper in numerical sequence according to the page and the line number of the Bill to which each amendment refers. They will also be debated in this order. This differs from the Committee Stage where use is made of section numbers and references can be made to subsections and paragraphs in the wording of an amendment. Where the time for debate runs out Opposition amendments will lapse while amendments tabled or to be accepted by the Minister will be agreed by way of a single 'guillotine question'.

The Minister may propose official amendments, depending on time. It may be necessary to put down an amendment so as to correct an error or close a loophole identified after the time limit for Committee Stage amendments has expired. However, official amendments are now usually only pursued only if imperative.

Any Ministerial amendment must first be agreed to by the Government. A draft of the amendment is then prepared and referred to the OPC for approval. Proofs of these amendments must be checked carefully. In the case of Report Stage amendments this process can be condensed into a few hours. Obviously any advance preparation possible should be undertaken and perhaps a draft provision cleared by the OPC if there is a strong likelihood the Minister will make an amendment. If an amendment for which a stamped draft has been supplied by OPC is not moved or it is decided that it will not be moved, then OPC should be advised accordingly.

Report Stage Speaking Note

For each Report Stage Amendment a Speaking Note should be prepared which either states the case in favour of a Ministerial amendment or the reasons why an Opposition amendment is opposed.

The note should be comprehensive as the procedure at Report Stage is to allow the Minister only two opportunities to respond to an Opposition amendment. This contrasts with the position in the Committee Stage in which the debate moves to and fro between the Minister and the Opposition without any restrictions/limitations on the number of contributions.

Use may be made of material in the Committee Stage Main Brief and Amendments Brief. Additional material may also be prepared in respect of any anticipated supplementary issues. However time constraints may limit the extent to which such material can be prepared in advance.

Dáil Procedure in respect of Report Stage Amendments

At the end of the debate on an amendment the proposer may withdraw it. Alternatively the amendment may be agreed to - this is often the case with Ministerial amendments especially if they are technical in nature. If not withdrawn or agreed, the amendment is put to the House for decision. The proposer may call for a division. At that point officials must leave and return again only when the result has been declared and debate resumed on the next amendment.

Fifth (Final) Stage

At the end of the Report Stage an order for the Fifth Stage is made. The Fifth Stage is taken immediately upon the conclusion of the Report Stage. This last stage is usually a formality. A motion is put to the House is 'That the Bill do now pass.' Debate usually consists of the Minister and opposition spokespersons making winding up speeches and making general remarks upon the debate in the House. It is not permitted for a Member to pose questions or raise more issues at this stage but officials should remain in attendance in the ante-room in anticipation of an issue arising on which the Minister requires briefing.

Fifth Stage Amendments

Standing Orders limit amendments during the Fifth Stage to 'verbal amendments' only. This relates to the amendment of simple errors in the Bill that have been overlooked or missed but no substantive amendment can be made at this stage. Neither can the mechanism of Recommittal of the Bill be employed at the Fifth Stage. As a general rule amendments which are proper for consideration at Committee or Report Stages are substantive in their own right and should not be discussed at Fifth Stage.

Chapter 11

Seanad Éireann and Signature by the President

Seanad Éireann and Signature by the President

The Role of Seanad Éireann

The Constitution provides that every Bill initiated in and passed by Dáil Éireann must be sent to Seanad Éireann. The Finance Bill is a Money Bill and certain constitutional restrictions are imposed on the Seanad in the consideration of such Bills.

- The Seanad cannot initiate a Finance Bill.
- The Seanad cannot amend a Finance Bill - it may merely make recommendations for change.
- The time allowed to the Seanad to consider a Finance Bill, provided it is certified as a Money Bill, is abridged from 90 days (as is usual for other Bills) to 21 days. In practice the Finance Bill is more likely to be dealt with within a week of its referral by the Dáil to the Seanad.

In view of the restrictions on the Seanad in relation to the Finance Bill the passage of the Bill through the Seanad has fewer pitfalls than in the Dáil. Also the debate in the Seanad is usually much shorter. Otherwise procedure in the Seanad is very similar, although not identical in every respect, to that applying in the Dáil and therefore much of the material prepared for the Dáil stages can be reused in the Seanad.

Bill as passed by Dáil Éireann

Following the Final Stage of the Finance Bill in the Dáil a further version of the Bill is printed. This version is headed 'As passed by Dáil Éireann'.

A revised version of the Explanatory Memorandum is no longer produced at this stage.

Second Stage

As a Bill passed by Dáil Éireann, the Finance Bill is automatically deemed to have passed its First Stage in the Seanad. The Seanad's consideration of the Bill therefore begins at the Second Stage. This Stage is opened by a general statement by the Minister covering the contents of the Bill in broad terms. It may also briefly cover budgetary and economic matters. Revenue officials are not concerned with this part of the Seanad proceedings, other than to give their views, if requested, on the Minister's Statement (drafted by the Department of Finance).

The debate in the Seanad is normally guillotined so that although the Seanad has 21 days to consider the Bill from the date of its referral by the Dáil such consideration usually takes place within a week. It is not unusual to have as little as two days set aside for the Finance Bill with the Second Stage taking up at least one day.

At the end of the Second Stage the Minister responds to the Senators' comments and there will usually be a division on the question put 'That the Bill be now read a Second time'.

Although Revenue is not directly involved in the Seanad Second Stage it is desirable that the debate be monitored for the same reasons as apply to the Second Stage in the Dáil. However as the time between the ending of the Second and the taking of the Third (Committee) Stage may be very short there may be little that can be done by way of preparing additional briefs.

Seanad Committee Stage

The remaining stages will normally be taken immediately on the conclusion of the Second Stage - unless of course there is no time on that day in which case consideration of all remaining stages will be deferred to the next sitting day. As in the Dáil, the Third (Committee) Stage in the Seanad allows for a section-by-section consideration of the Bill. In practice there is little time to do anything other than to debate the Seanad recommendations and formally agree the sections. Nonetheless the Minister must be equipped with a brief on the Bill as detailed similar to that prepared for the Dáil. The Seanad brief requires much less work since all that is required is to amend the Dáil brief. Updated briefing material must be provided to the Department of Finance on any new provisions inserted at Committee or Report Stages in the Dáil or any amendments to other provisions.

Seanad Additional Brief

This will be the Additional brief used in the Dáil updated and amended where appropriate. The debate during the Second Stage in the Seanad may give pointers as to the kind of issues Senators will raise in Committee and where possible officials attending on the Minister should prepare briefs or inform themselves of the issues involved.

In the event that a Seanad recommendation succeeded it would then have to be referred back to the Dáil.

The list of proposed Seanad recommendations for the Committee Stage will be published in advance. Most, if not all, of these recommendations will repeat amendments put down by opposition spokespersons in the Dáil and may require only a revision of the papers prepared for the Dáil. If a recommendation repeats a Dáil amendment which was debated the brief should be re-cast to avoid exact repetition of what was said in the Dáil and to take account of points made in the course of the Dáil debate on the topic. In general however there will be less Seanad recommendations than Dáil amendments. The order in which the recommendations are listed follows the section numbering of the Bill to which a recommendation refers. The Minister's response to each recommendation should be set out concisely. Invariably the Minister will oppose the recommendation.

If necessary additional briefing may be prepared on a recommendation if debate on it is likely to raise other issues. At the conclusion of the debate on a recommendation the proposing Senator may withdraw the recommendation. If it is not withdrawn the Cathaoirleach will put the question to the House by

saying ‘The question is that... (followed by the text of the recommendation)’. If, in the Cathaoirleach’s view, the majority of those present are against the question the proposing Senator may request a division which is then held behind locked doors and in the absence of officials and also the Minister as the Minister is not a member of the Seanad.

Fourth (Report) Stage and Fifth Stage

The Bill will next proceed to the Fourth Stage. This will normally occur immediately upon the completion of the Committee Stage. Senators may again propose recommendations. However, no recommendation that has been rejected at the Committee Stage may be put forward again. A recommendation that has been withdrawn at Committee Stage may be repeated. Other restrictions imposed upon the Report Stage amendments in the Dáil also apply to Seanad recommendations. In practice the Report Stage in the Seanad is largely procedural and the Bill will usually be declared reported without recommendation. The Fifth Stage will be no more than an acknowledgement that the Bill is received for final consideration. At this stage Bills which are not Money Bills are declared passed by both Houses. A Money Bill, such as the Finance Bill, must be returned to the Dáil. The Seanad sends a message to the Dáil informing it that the Bill has passed without recommendation.

On the Bill’s return to the Dáil (as a Money Bill, not longer than 21 days after it was sent to the Seanad – see Article 21.2.1o of the Constitution) the Ceann Comhairle informs the House that the Seanad has accepted the Finance Bill without recommendation. The Bill is then deemed passed by both Houses of the Oireachtas and is ready for signature by the President.

In the event that the Seanad does pass a recommendation the Bill is returned to the Dáil, or if the Seanad does not return it to the Dáil within 21 days, then Article 22.2.2o of the Constitution has effect. Article 22 provides as follows:

ARTICLE 22

1. 1° Money Bills shall be initiated in Dáil Éireann only.
2° Every Money Bill passed by Dáil Éireann shall be sent to Seanad Éireann for its recommendations.
2. 1° Every Money Bill sent to Seanad Éireann for its recommendations shall, at the expiration of a period not longer than twenty-one days after it shall have been sent to Seanad Éireann, be returned to Dáil Éireann, which may accept or reject all or any of the recommendations of Seanad Éireann.
2° If such Money Bill is not returned by Seanad Éireann to Dáil Éireann within such twenty-one days or is returned within such twenty-one days with recommendations which Dáil Éireann does not accept, it shall be deemed to have been passed by both Houses at the expiration of the said twenty-one days.

Signature by President

The Constitution provides (Article 25) that as soon as any Bill is passed by both Houses of the Oireachtas the Taoiseach shall present it to the President for signature. Signature in the normal course must take place not earlier than the fifth day and not later than the seventh day after the Bill has been presented. However, the Government may decide to request the President to sign the Bill earlier than the fifth day. In that case they must get the prior agreement of the Seanad. Accordingly, the concluding act of the Seanad in dealing with the Finance Bill, and after its return to the Dáil is ordered, may be to agree a motion for early signature. A typical reason for the Finance Bill to get early signature is that it may become law in good time to meet the four months timeline on any Budget Day Financial Resolutions. Under the new scheduling of the EU Semester process the need for an early signature motion may diminish.

The only RLS involvement in the signature of the Bill by the President is in ensuring that the actual copy of the Bill to be signed is correct. This is yet another, and final, checking exercise for the co-ordinators. Copies of the 'vellum' copy are dispatched by the Bills Office to the relevant parties responsible for the bill, namely Finance and RLS. The discovery of errors at this stage could cause problems. Any change to the vellum copy is a serious issue and any correction can only be made on the instructions of the Clerk of the Dáil. It may be necessary for the co-ordinator to make a formal written representation to this effect. The Clerk has limited authority to make corrections to minor errors that have gone unnoticed during earlier checking. There is an important proviso to this: The correction must be to an obvious error and must not in any way alter the interpretation which could be put on a provision. In this context the addition or deletion of punctuation could be a particularly sensitive matter. If the Clerk cannot make a correction the Bill will be signed with the error in place and the matter will have to await an amendment in the Finance Act of the following year. Alternatively, in the instance where a modification of the TCA needs to be made in advance of a new Finance Bill, arrangements can be made to 'piggy-back' an amending section (or sections) in another compatible bill that is expected to progress into law in the meantime. This, of course, must be by way of the agreement and co-operation of the lead department of the bill concerned ('the piggy'). This option is not uncommon, although care needs to be taken that the bill in question will succeed to enactment in good time (many bills do not (since they are not subject to the timelines for enactment as a money bill)). The RLS/Finance co-ordinators each formally sign off on the final vellum copy directly with the Bills Office in the Bills Office premises. The vellum will now be finished ready for signature, dated and numbered according to the signature schedule.. The signing brings the Finance Act into full legal effect as an Act of the Oireachtas. This formally concludes the legislative process.

Chapter 12

After the Finance Act

After the Finance Act

The signing of the Act brings into law many changes and amendments in the various taxes and duties under the care and management of the Revenue Commissioners. These changes and amendments must be reflected in terms of the practical implications they have for both Revenue staff and taxpayers in general. To this end RLS follows up the signing of the Act by undertaking a number of tasks. These include the preparation of the following:

- Statutory Instruments
- Guidance notes
- Tax & Duty Manuals
- Other Leaflets and online information

Statutory Instruments

These are a form of secondary legislation designed to supplement provisions in primary legislation. Statutory Instruments (SIs) will be considered in more detail in the next Chapter.

Notes for Guidance

Immediately following enactment, and simultaneous with effect from 1 January, or nearest thereto, RLS publish online comprehensive updated Notes for Guidance reflecting all respective updates, changes and amendments.

Revenue Tax & Duty Manuals

These should be created and/or updated at the earliest possible time following enactment.

Other Leaflets/Guidance

Care needs to be taken at all levels to ensure all legislative changes are accurately reflected in good time on all Revenue advices and guidance.

Chapter 13

Statutory Instruments

Statutory Instruments

In Chapter 1 the distinction was made between primary and secondary legislation. The Finance Act is a good example of primary legislation. However arising out of such an Act there can be a need to make supplementary legislative measures as provided for by an Act. This is the task of secondary legislation and the main instrument of secondary legislation is the Statutory Instrument.

As with Acts, Statutory Instruments (SIs) are to be interpreted (unless otherwise provided for) in accordance with the Interpretation Act, 2005. In addition the Statutory Instruments Acts 1947 and 1955 apply to most statutory instruments. These define an SI as being an ‘order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute’. The important thing to understand is that SIs are secondary legislation – they derive from, and are subject to, primary legislation – the intention is to provide support for primary legislation.

For all SIs care must be taken to ensure that the scope or authority of the primary legislation is not exceeded. If it is exceeded in any way it may be subject to challenge in the Courts. There have been a number of cases where SIs have been struck down by the Courts on the grounds that they were ultra-vires (beyond the powers) of the primary legislation.

In 2003 the Office of the Parliamentary Counsel (OPC) published a drafting manual on SIs entitled “Statutory Instruments: Drafting Checklists and Guidelines”. It was made available to all Government Departments as well as the Revenue Commissioners. It provides a detailed drafting checklist and comprehensive guidelines for all issues relating to SIs.

Statutory Instruments System

The administration of Statutory Instruments ready for publication and laying down is now achieved using the online application at <https://www.cahill-printers.ie/cios/Logon.asp>.

There is a comprehensive guide to this system on the front page of the website. The front page also provides contact details for the SI Desk operated by the OPW.

On completion of the SI, the documents are ‘laid down’ by using the following link on the Oireachtas website <http://www.oireachtas.ie/parliament/about/libraryresearchservice/documentslaid/>

Orders and Regulations

Most SIs produced by RLS deal with administrative matters. They are made under specific provisions of an Act and predominantly take the form of Orders or Regulations. It will be made clear in primary legislation whether the SI required is to be an Order or a Regulation.

An **Order** is made in respect of a single exercise of a delegated power (e.g. a commencement order – see below) or an instrument which does not need to deal with the setting down of a regulatory framework, etc. (e.g. a power to settle fees by instrument with no other power, would normally be a order)

The following is an example of the clause used in primary legislation allowing for the Minister to make an Order:

‘This section comes into operation on such day as the Minister for Finance may appoint by order.’

Regulations contain detailed provisions relating to the general substance of the primary statute. In respect of Revenue matters, regulations are instruments that are made by the Minister or by the Commissioners as provided for by the Act. Ministerial consent is required for Regulations that have Exchequer implications. The following are examples of the clause used in primary legislation allowing for the Revenue Commissioners to make Regulations:

‘The Commissioners may, for the purposes of, make regulations.’

In the case of Regulations involving income tax/corporation tax/capital gains tax, the RLS has been requested to advise the Department of Finance of the intention to make such Regulations. About four weeks notice should be given and a copy of the proposed Regulation and the Explanatory Note should be sent to the Department of Finance so that the Minister may be alerted.

VAT

VAT Orders and Regulations provide a useful example of all issues relating to SIs. – The remainder of this Chapter (other than the examples referred to under Dáil Involvement as mentioned below) will use VAT to illustrate a number of issues..

Orders and Regulations in the VAT area are explained as follows:

VAT Orders deal with money matters e.g. refunds of tax, changes in rates, exemptions, etc.,

VAT Regulations deal with more administrative matters e.g. invoices, records, accounting procedures, etc.

Consent of Minister

The consent of the Minister for Finance is necessary for certain Regulations where there are potential financial implications.

Dáil Involvement

There are two forms of Dáil Involvement in SIs made by Revenue or the Minister for Finance (similar Seanad Involvement can arise in other types of legislation):

Example 1 - laid in draft (section 126(6)(b) of Taxes Consolidation Act 1997):

- (b) Where an order is proposed to be made under this subsection, a draft of the order shall be laid before Dáil Éireann, and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

Example 2 – laid after it is made (section 122(7) of Taxes Consolidation Act 1997):

- (7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Prior to drafting, interested parties, such as other areas of Revenue, other Departments, trade associations, professional bodies, etc., are contacted as required. It may also be necessary to arrange meetings with interested parties, but the requirements in this area will vary from case to case. For minor matters or those of a purely administrative nature it may not be necessary to consult any outside interests. It may also be necessary to obtain technical advice outside the Revenue, e.g. from Universities or from some of the interested parties listed above. Any source available may be used having regard to the degree of confidentiality of the proposed legislation.

EU

The VAT Directive

As explained in Chapter 3 Ireland's VAT legislation must conform to EU VAT law. The VAT Directive (Council Directive 2006/112/EC) and subsequent amending Directives are of major importance and should be read before any drafting of SIs is undertaken.

VAT Regulations

VAT is broad based and impacts on almost every business transaction. The law is set out in the VAT Consolidation Act 2010, but there is a need for regulations governing a wide range of VAT matters that are too detailed to be included in the Act itself. Section 120 of the VAT Consolidation Act permits the Revenue Commissioners to make such Regulations as they deem necessary to control the day-to-day administration of the tax.

Flexibility

Section 120(16) of the VAT Consolidation Act provides that the Revenue Commissioners may make flexible Regulations or different Regulations and

procedures for certain classes of persons e.g. issue of invoices by flat-rate farmers. Occasionally VAT Policy & Legislation Branch draft Regulations to implement EU Directives. These Regulations are made under the European Communities Act 1972, rather than the VAT Consolidation Act. Such Regulations are signed by the Minister. Accordingly, the final stages of the legislative process in such cases are carried out by the Department of Finance. It is no longer necessary to confirm these Regulations in the Finance Bill.

VAT Orders

Section 103 of the VAT Consolidation Act provides authority for the Minister for Finance to make Statutory Orders to repay VAT in certain cases.

Orders for the purposes of varying Schedules to the VAT Act

Section 46(4) of the VAT Consolidation Act provides that the Minister for Finance may by Order vary Schedules 2 or 3 to the VAT Consolidation Act. However, the Minister may not in an order increase the rate or extend VAT to an item not already chargeable to VAT. Changes of this nature can only be provided for either in a Budget Day Financial Resolution or in the Finance Act.

The Minister may amend or revoke such an Order.

Orders for VAT ‘Exemption’ purposes

The Minister may make an Order declaring a VAT activity to be an exempted activity. The Minister may also amend or revoke such an Order.

Drafting of Statutory Instruments

SIs are drafted using the same methods used in creating all other legislation. The form of words and formats will generally be available from existing instruments. Any relevant EU Directives should also be considered.

It will be helpful to note the following points:

- Certain paragraphs will be common to most SIs;
- There will always be an introductory statement that states the authority under which the SI is being made. The first numbered paragraph will be the citation and (if different from the date the instrument is to be made) commencement. The next paragraph will contain any general definitions required. This is followed by a paragraph setting out the principal provisions of the SI. Any conditions, restrictions or exceptions should follow on from this;
- In the case of relieving orders the penultimate (second last) paragraph will specify the manner in which the relief should be claimed;
- If it is necessary to revoke existing instruments this will be done in the final paragraph.

An SI must be drafted in an equitable manner. The person entitled to relief should be able to meet with the requirements of the law, having regard to the potential for fraud, without undue difficulty.

Final Version

Other than certain types of SIs identified in the Cabinet Handbook (in particular, SIs to be made by the Government) there is no obligation to refer the draft of an instrument to the OPC for settling. In many cases, SIs can be necessary for the purposes of administrative effect (e.g. reporting obligations, regulations applying to procedures or methodologies) which may have little requirement to open up their consideration of their primary provenance. In such instances, the SIs may be within the competence of the drafter. However, it is important to note the OPC provides advice to RLS on such matters if required and it is recommended that such advices are sought. For example, in the case of SIs arising on foot of recent primary legislative initiatives which the OPC is familiar with, it may be opportune to consult with them anyway where there is the potential for them to add value and seek to establish a high level of quality from the outset.

In cases involving very urgent matters it is possible to consult with the OPC by phone. As ever, the OPC is a source of excellent advices at all times and it will respond in the most professionally appropriate manner to all queries.

In the case of drafts to be settled and stamped by the OPC the submission must include a letter to the OPC explaining the purpose of the instrument and indicating any particular difficulties there may be in connection with the draft. A copy of this letter and the draft SI is usually sent to the Department of Finance at this stage as a matter of courtesy.

The OPC will consider the draft and make any changes deemed necessary. Once all matters are agreed a final stamped copy will issue.

Signature of Commissioner

When the final version is agreed the instrument is prepared for signature. The signature procedure varies depending on the type of instrument involved, as follows:

Commissioner's SIs

In the case of a Commissioner's Regulation the agreed version and the Explanatory Note is typed and brought to the Commissioner for clearance together with such background or briefing material as is considered necessary. When these have been agreed the Regulation and the Explanatory Note are prepared on vellum paper and are signed and dated by the Commissioner. The Commissioner also gives approval for the issuing of the notices mentioned above by signing and dating a copy of each notice and endorsing it 'Approved for issue'. Drafts of the Commissioner's 'approval for issue' covering the texts of the Notice for Iris Oifigiúil, the Press Advertisement and the Press Release in connection with the Regulation should also be shown to the Commissioner.

Commissioner's SI's requiring Ministerial consent

In the case of a Commissioner's Regulation requiring the consent of the Minister the Commissioner does not date the signature. The Commissioner's signature will be dated later with the date of the Minister's signature. When sending such an SI to the Department of Finance for sealing or signature a letter that sets out its purpose and background is prepared. Normally an SI is sealed with the Minister's seal and the Minister in effect witnesses the seal with his or her signature. It is also possible for the Minister to authenticate only by signature. If a Minister of State (i.e. a junior non-cabinet Minister) has been given the power to make the instrument (which power would be given by Government Order), he or she makes or approves the SI (as the case may be) under his or her signature and not by Ministerial seal. Junior Minister involvement also affects the recital to the SI. Where a Commissioner-made instrument is duly approved by the Minister it is returned to the Revenue Commissioners. This document is the actual legal instrument and should be retained safely at all times.

Ministerial SIs

In the case of Ministerial SIs the final version agreed with the OPC is submitted to the Department of Finance with a letter setting out the background etc. RLS involvement ends here and the Department of Finance carry out all further stages of the process using the SIS online facility.

