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information for all

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Contents

Page No.

1 **Social Welfare Bill, 2003**
Changes in rent supplement for asylum seekers, SWA weekly payments and pension fund rules

3 **Dental Benefit**
Both the Department and the patient will have to pay more for treatment

3 **Finance Bill, 2003**
The Bill provides for changes in charitable donations and tax relief on pension contributions

6 **National Development Finance Agency**

6 **Local Government Bill, 2003**
The Bill provides for the ending of the dual mandate and the abolition of direct elections for certain local authority positions.

6 **Health Insurance Amendment Bill, 2003**

7 **Opening a Bank Account**

7 **Employment Permits Bill, 2003**

Social Welfare (Miscellaneous Provisions) Bill, 2003

Most of the increases in social welfare payments announced in the Budget have already been brought into effect. This Bill deals with those increases which were not provided for in the Social Welfare (No. 2) Act, 2002, a number of other changes announced in the Budget and some changes announced since. Here we describe those changes which were not already described in the January 2003 issue or about which more information is now available. As we write, the Bill has been passed by the Dail.

Social welfare benefits for asylum seekers

Asylum seekers who arrived in Ireland prior to April 2000 usually qualify for weekly Supplementary Welfare Allowance (SWA) and, if they are in rented accommodation, a Rent Supplement. Most such asylum seekers should have had a decision on their application for refugee status made at this point. Those who were granted refugee status or given leave to remain are entitled to work and are eligible for the usual range of social welfare payments.

Most asylum seekers who have arrived in Ireland since 10 April 2000 are in what is called "direct provision". This means that they are provided with accommodation and meals and they get supplementary welfare allowance payments of €19.10 per adult and €9.60 per child – this is generally known as pocket money. They may apply for exceptional needs payments on the same basis as everyone else. Asylum seekers may also claim Child Benefit. The Government has decided that the accommodation needs of asylum seekers will, in future, be met exclusively through the direct provision system.

Sometimes people who are in direct provision leave the accommodation provided, find private rented accommodation and apply for a Rent Supplement. The Bill provides that new claims for rent supplements from

INSIDE: Changes to Benefit in Kind from 2004 p2 & p4
PLUS: EU Supplement and Summary of International Convention on Social, Economic and Citizenship Rights

asylum seekers will not be granted. If the people concerned get refugee status or are given leave to remain, they can then claim the supplement. Generally, people who are granted refugees status or given leave to remain leave the direct provision system.

The Bill provides that the health boards will have discretion to pay rent supplement in urgent cases to asylum seekers and people who are not lawfully in the country.

It is not yet known when this provision will come into effect. It will not have retrospective effect and will apply only to new claims made after the section comes into effect.

Entitlement to weekly SWA

The Bill gives the health boards greater powers to require applicants for weekly SWA to be available for and genuinely seeking work. At present, the health board may require an applicant to register for employment by signing on for Unemployment Assistance. The new provision in this Bill means that the health board will be able to require a person to actively look for employment while receiving SWA and waiting for a decision on UA. This is the same condition as applies to applicants for Unemployment Benefit and Assistance – you must be capable of, available for and genuinely seeking employment.

The Minister said in the Dail that these were "discretionary conditions which will be applied on a selective basis where a health board considers that the circumstances of a particular case so warrant. The only people who will be affected by this provision are those for whom either Unemployment Assistance or Unemployment Benefit is the appropriate social welfare payment but who may have intended to claim Supplementary Welfare Allowance indefinitely as an alternative to complying with the terms for receipt of Unemployment Assistance or Unemployment Benefit."

A significant number of people applying for SWA are sick but do not qualify for Disability Benefit. It is not expected that they will be affected by this new provision.

Means Test

The Bill provides that regulations may be made for the assessment of non cash benefits in the case of Unemployment Assistance, Disability Allowance, Pre-Retirement Allowance, Supplementary Welfare Allowance and Farm Assist. It is not clear what exactly is intended by this provision. At present, the assessment of, for example, board and lodgings, is done on an administrative basis, i.e. it is not contained in an Act or Statutory Instrument. The Bill includes a provision which limits the application of the board and lodgings provisions to people under 29 who are living with parents or step-parents.

Payments after death

As a general rule, when a social welfare recipient dies, the payment may be payable to his/her spouse or partner for 6 weeks after the death. There were some gaps in this provision, especially in the case of short term benefits. At present, where the deceased person was receiving an unemployment or disability payment and the surviving spouse or partner was receiving a social welfare payment (other than Old Age or Blind Pension or Carer's Allowance) in his/her own right, the surviving spouse does not qualify for the six weeks' payment after death. This will be changed from June. This means that where a person who was receiving Disability Benefit, Unemployment Benefit, Invalidity Pension, Unemployment Assistance, Unemployability Supplement, Supplementary Welfare Allowance, Pre-Retirement Allowance, Disability Allowance or Farm Assist dies, and his/her spouse is receiving certain benefits in his/her own right, the deceased person's payment will be paid to the surviving spouse's or partner, as well as their own payment.

Orphan's payments

The Bill provides for changes in the orphans payments arrangements when children are in foster care. At present, the Department of Social and Family Affairs (DSFA) pay any orphans benefits directly to the health board which is arranging the fostering of the children. The health board then combines the orphans payment with the foster care allowance to make a total payment to the foster carer of €281.50 for a child under 12 years and €308.50 for a child aged 12 or over. The Bill provides that that orphans payments will no longer be payable by the DSFA to the health boards foster care. The health boards will now fund the full payment to foster parents. This arrangement will come into effect on 1 April 2003.

The amount paid to foster parents is not affected by this change.

Orphans payments will continue as before where the health boards are not paying a foster care allowance.

Benefits In Kind

The Bill provides for the application of PRSI and the health levy to Benefits In Kind from January 2004 – this is discussed under the Finance Bill below.

Occupational Pensions

The Bill also provides for some changes to the Pensions Acts. These are mainly technical. Some are designed to address the current funding problems being experienced by defined benefit schemes – they will allow the Pensions Board to adopt a more flexible approach to funding requirements. The Board will decide the details on a case by case basis but the Minister indicated that the Board may allow an 85% funding requirement in some cases rather than 100% at present. The Bill also provides for provisions to prevent people being enticed out of existing pension schemes and into PRSAs – these are called anti-churning provisions. Among other things, they provide that a person moving from an existing pension scheme to a PRSA or from one PRSA to another must be given information about the effects of the move.

Pensions Ombudsman

The first Pensions Ombudsman has been appointed. The Bill provides that the Office of the Pensions Ombudsman will be subject to the Freedom of Information Act but it will not apply to any examination or investigation carried out by the Ombudsman under the Pensions Act.

Dental Benefit

New arrangements have been agreed between the Department of Social and Family Affairs and dentists who are providing services under the Treatment Benefit scheme. Broadly, this means that, if you are entitled to Dental Benefit under the scheme, you will have to pay an extra 10% for those treatments which are subsidised by the scheme. The Department is also paying 10% more towards the costs involved. In summary, you are entitled to the following:

- Oral examinations and scale and polish treatments are free of charge
- The Department's contribution is being increased by 10% and you will have to pay 10% more than you used to pay
- An extraction will be €11.75, up from €10.67
- Fillings are subsidised – this means that there is no fixed charge but the Department pay a contribution towards the cost. The Department's contribution will be €29.20 for a simple amalgam filling – up from €26.54. So, the cost to you is the dentist's private fee, less 15%, less the Department's contribution
- Dentures and other treatments will cost you 10% more than they used to and the Department will also pay the dentist 10% more.

Dentists in the scheme have agreed to display a price list of treatments. This list will show the private fee and the fee payable by those entitled to Dental Benefit.

Finance Bill, 2003

The Finance Bill, 2003 implements the tax changes announced in the Budget as well as a number of other changes. Here we describe those changes which most affect individual citizens and which have not already been covered in the January 2003 issue of Relate or about which more information is now available. The Bill is not yet finally passed but it has been passed by the Dail. The Seanad has no power to amend a 'money bill' so the Bill as passed by the Dail is effectively the final version. As usual, the Bill is long and complex.

PAYE and PRSI on Benefits In Kind

The application of PAYE and PRSI to Benefits In Kind (BIK) was announced in the Budget to take effect from 1 January, 2004. The most commonly quoted example of a benefit in kind is a company car. In fact there is a whole range of other benefits in kind including share options, bonus bonds, accommodation, reduced charges for the company's products, payment of items such as health insurance costs and subscriptions to sports clubs. Benefits in kind are subject to income tax but this is rarely levied directly under PAYE. There are specific rules about taxation of company cars and share options. It seems that, in practice, some of the other benefits may have escaped tax. From the beginning of the next tax year – January 2004, benefits in kind (other than share options) will be subject to PRSI and the health levy as well as direct PAYE.

The application of PAYE directly to benefits in kind should not result in increased tax for the employee – unless tax was not being applied at all.

The application of PRSI means that those employees whose income is below the employee PRSI ceiling may have to pay more PRSI while those with income above the threshold will not pay any extra. The PRSI ceiling is €40,420 at present but we do not know what it will be when this new arrangement comes into effect in January 2004. As there is no ceiling on employers' PRSI, employers will have to pay more. (Some employees earn less than the PRSI threshold - €287 a week - but they are unlikely to be receiving benefits in kind.

All employees who receive benefit in kind will have to pay the health levy of 2% if their total income is above the health levy threshold - €356 a week. There is no ceiling on the health levy.

Company Cars

The way in which tax is calculated on company cars will be simplified. The tax is based on the original value of the car and is also related to whether or not the employer pays the running expenses – tax, insurance, fuel - and to the level of business mileage. In the case of cars the number of variations in the calculation will be reduced from 17 to 4. The calculation of the benefit of a van for BIK purposes will be 5% of the original market value of the van.

Share Options

The tax on share options will be levied at the time the share option is exercised. There are transition arrangements for current owners of share options – this is very complex but people in this situation have choices to make and must make some of them by 1 June 2003.

Donations to Charities

In general, approved charities may reclaim the tax paid on donations by the donors. In the case of some religious orders – who are charities – it is the practice for the members who are in employment to hand over their earnings to the order. These earnings would have been subject to tax in the normal way and the religious order could then reclaim the tax paid on the basis that this was a charitable donation. The Bill provides for a limit on the amount of such income that can attract tax relief. If a donation is made by an individual who is directly associated with the charitable organisation, for example an employee or a member of the organisation, there will be a limit of 10% of the individual's income which can attract tax relief.

Tax relief for donations in all other situations will continue, as currently, without any ceiling. The general scheme was introduced in 2001 and the only details available about how it operates are from the short tax year 2001 and in respect of PAYE taxpayers. The scheme is administered differently for the self employed. In that short year, the cost of the scheme was €12.7 million- there were 407 approved bodies and approximately 23,700 donors. About 36 religious orders got tax relief to the value of about €7.6 million from 2,600 donors – the vast majority of this arose from the transfer of income by members of those orders.

Pension contributions

Tax relief up to a certain proportion of income is available on contributions to occupational and personal pension schemes and to Personal Retirement Savings Account (PRSA) contributions. This was described in the August 2002 issue of Relate. The upper limit was different for PRSAs but this is now changed so that the limits are the same for all pensions. These are;

aged under 30	15% of income
aged 30 –39	20% of income
aged 40 and over	25% of income
aged 50 and over	30% of income

Last minute Additional Voluntary Contributions (AVC)

The Bill also prevents people making last minute additional contributions to pension schemes just before retirement. As already stated, contributions to a pension scheme usually attract tax relief up to a proportion of your income. It may happen that in one year you may not have enough income to fully benefit from the tax relief available. You can carry forward your entitlement and avail of it in a subsequent year.

If you cannot get such relief in a subsequent year because you are retiring, you could carry it back against income in 10 earlier years. It appears that schemes of "last minute AVCs" have come on the market to take advantage of this arrangement. The Bill provides that, in general, such contributions may only be carried back against the previous year's income. The existing arrangements will continue in existence for;

- contributions to provide for spouses and orphans benefits, and
- contributions made in connection with the repayment of benefits already provided by an employer or a scheme e.g. repayment of marriage gratuity.

Approved Retirement Funds (ARFs)

The Bill provides for new rules to prevent approved retirement funds being used for investment in assets or property for private or family business use, for example, the purchase of a holiday home by the fund for personal use. This is because it seems that some ARF holders are not withdrawing money from the fund for these investments and are therefore avoiding tax. In future, such purchases will be treated as withdrawals from the fund and so will be liable to tax at the fund holder's marginal rate. The following investments will be treated in this way;

- loans to the ARF holder
- property that is not at arms length from the ARF owner. Property that is leased or re-sold must be on an arms length basis
- holiday property which is used by the ARF holder
- shares, debentures etc. in any company in which the ARF holder has a beneficial interest
- works of art, jewellery, vintage cars, yachts, or other personal chattels that are used by the ARF holder.

These changes will also apply to any person connected to the ARF holder.

Capital Gains Tax

Sporting bodies are not subject to income tax. The Bill provides that they will be exempt from CGT if the capital gain from the sale of any assets are used purely for sporting purposes.

Trade unions are already exempt from capital gains tax in certain circumstances. This exemption is being extended to situations where the capital gain is solely applied for trade union activities.

Interest on overpaid tax

The provisions in relation to repayments of overpaid tax and the application of interest to such repayments were described in last month's issue. These provisions relate to the future and do not affect the cases which were addressed by the Ombudsman in his report or similar cases.

The Bill contains some provisions for dealing with these cases and the Minister for Finance also announced an administrative arrangement.

There is a legislative arrangement for those widows who were affected by the decision that the element of their Garda Widow's pension payable in respect of children was not taxable as their income but as the income of the child. These are known as the O'Carroll case widows. The Revenue Commissioners now have statutory authority to make payments for loss of purchasing power to these widows. This will be calculated on the basis of the Consumer Price Index.

The administrative arrangement only affects those ten people about whom the Ombudsman made a recommendation. They will get an ex gratia payment of compensation.

Private hospitals

Capital allowances are already available for the building of private hospitals if various conditions are met. Among other things, the hospital must have at least 70 in-patient beds. These conditions are being amended to allow hospitals which provide day care facilities to qualify. To qualify, a day care hospital must provide a minimum of 40 day care beds, outpatient services, operating theatres and on-site diagnostic and therapeutic services. It must also have facilities to provide at least five specialist services, ranging from accident and emergency to oncology and cardiology, etc. At least 20% of the bed capacity must be available for public patients and the hospital must treat those public patients for 10% less than the usual rates.

The capital allowances regime provides for a seven year write-off period. The investor gets an allowance of 15% a year for the first 6 years and 10% in the 7th year. There are clawback arrangements if the building ceases to be used as a hospital. There is a maximum of €31,750 per annum on the amount of capital allowances which an individual passive investor can set against non-rental income and there are various rules excluding certain people – including employees or directors of the hospital and property developers – from getting the capital allowances.

National Development Finance Agency

The National Development Finance Agency Act, 2002 provides for the establishment of the National Development Finance Agency (NDFA) to help with providing finance for infrastructure projects. It will operate through the National Treasury Management Agency (NTMA).

The main functions of the agency are;

- to advise the various government departments and state agencies on the best means of financing major public investment projects in order to achieve value for money
- to advance money and enter into other financial arrangements regarding projects approved by any State authority
- to provide advice to State authorities on all aspects of the financing, including refinancing and insurance, of public investment projects, and
- to form companies for the purpose of getting finance for public investment projects.

The state agencies include government departments, national authorities, local authorities, universities, etc.

The agency has the power to borrow money up to a maximum of €5 billion. In certain circumstances, it will be able to raise finance for Public Private Partnership projects where this would be more cost effective than private funding. Government departments and agencies will be obliged to get the agency's advice before embarking on relevant projects but will not be bound by that advice.

Local Government Bill, 2003

The main aim of the Local Government Bill, 2003 is to end the "dual mandate". This means that politicians will not be able to be members of the Dail or Seanad and members of a local authority at the same time. This will come into effect when the next local government elections are held in 2004.

Ministers, Ministers of State, The Ceann Comhairle, the Cathaoirleach of the Seanad and MEPs are already debarred from membership of local authorities. Members of the Dáil or Seanad may not hold the position of cathaoirleach or leas-chathaoirleach of a local authority. (Judges, Gardaí and some other officeholders are also debarred from membership.)

There was a provision to end the dual mandate in the Local Government Bill 2000 but this was dropped before that Bill was enacted as the Local Government Act, 2001.

Members of the Dáil and Seanad will be able to ask their local authority to provide them with notice of meetings and agendas for these meetings. The Minister for the Environment and Local Government will make statutory regulations on how local authorities are to deal with TDs and Senators. It is expected that they will have the right to access various information about the activities and planned activities of local authorities – the Minister said that the regulations would provide that Oireachtas Members "continue to receive a satisfactory level of service in carrying out their representational role".

The Bill also provides for the repeal of the provisions in 2001 Act which provided for the direct election of mayors and cathaoirligh of councils in 2004. Local government elections must be held in 2004. The newly elected councillors will select one of themselves as mayor or cathaoirleach.

Health Insurance (Amendment) Bill, 2003

This Bill deals with risk equalisation. This arises from the introduction of competition into the health insurance market. The Health Insurance Acts 1994 and 2001 (see Relate, October 2001) dealt with most of the issues but there are technical problems to be resolved and this Bill deals with these. The Health Insurance Authority has overall responsibility for risk equalisation.

Risk equalisation means spreading the risk among all the providers of health insurance. Basically, the idea is that any one provider would not have to carry the risk of a disproportionate number of sick people among its customers. The issue is causing concern at EU level because of its possible effects on competition. One health insurance provider has complained to the EU that risk equalisation would constitute an illegal State aid.

Opening a bank account

People are often surprised to discover that they have to prove their identity when opening a bank account or an account in any financial institution. The need to prove your identity arises because of money laundering legislation. The Criminal Justice Act, 1994 implements the EU Money Laundering Directive in Ireland. This provides that, among other things that a financial institution must take reasonable measures to establish the identity of any person for whom it proposes to provide a service. So, each bank or financial institution is obliged to get some evidence of your identity if you are going to do business with them.

The Act does not specify what these reasonable measures are. In 1995, Guidance Notes on the matter were issued by the Money Laundering Steering Committee which was set up by the Department of Finance and includes representatives of the financial services industry and the relevant authorities. Some bank customers had problems in getting the required documentation because they did not have passports or driving licences or other similar forms of identity. The Guidance Notes were revised in 2001 and the new guidelines were to be in operation by May 2002. Among other things, the new guidelines try to ensure that measures adopted by financial institutions should not deny a person access to financial services on the grounds that they do not possess specified identification documentation, while at the same time ensuring that financial institutions are in a position to comply with their legal obligations.

The Guidance Notes advise the financial institutions of the various forms of identity which may be used – the favoured is a full passport. Other official documents which include a photograph and a signature are also acceptable – for example, a driving licence or an age card issued by the Gardaí. The Guidance Notes also acknowledge that certain people, particularly the young and older people, may not be able to provide appropriate documentary evidence of their identity. Where a person cannot satisfy this requirement the financial institution may adopt alternative identification procedures. Under these procedures an identification form with photograph signed by a member of the Gardaí or documentation/cards issued by a Government Department showing the name of the person, together with a letter/statement from a person of responsibility, e.g. a solicitor, accountant, doctor, minister of religion, teacher, social worker, community employment scheme supervisor, who is in a position to confirm the person's identity to the financial institution, may be accepted. The final decision on what is an appropriate form of identification rests with the financial institution.

The full text of the Guidance Notes for Credit Institutions is on the Department of Finance Web site at – http://www.finance.gov.ie/Publications/otherpubs/monlaun.htm

Employment Permits Bill, 2003

The Employment Permits Bill proposes to put the requirement for certain non-nationals to have a work permit into primary legislation and provides for free movement of workers from the countries which are expected to join the EU in 2004. It has not yet been discussed by the Oireachtas but it is expected to be law by 16 April 2003.

Work Permits

The Bill puts the requirement for work permits ("employment permits" is the official title) into primary legislation. The existing legislation is contained in secondary legislation – the Aliens Order 1946. It does not change this law – it simply restates it. The Bill does not set out the criteria on which permits are to be granted not does it distinguish between work permits and work authorisations. Basically, a work permit allows a person to work for a specific employer while a work authorisation allows a person to work for any employer. These distinctions are expected to continue on an administrative basis.

It will be an offence for an employer to employ a non-national without an employment permit and it will be an offence for a non-national to be employed without the proper documents. This provision is also in the Immigration Bill, 2002 but will be removed from there when the Employment Permits Bill is

Bereavement
Information for those affected by Bereavement

New booklet published jointly by Comhairle and the Department of Social and Family Affairs.

Available from Citizens Information Centres and Comhairle Offices

passed (see Relate, March 2003 for other information on the Immigration Bill).

The Bill sets out the penalties for non compliance by either an employee or employer – the penalties range from €3,000 or 12 months in prison (or both) for a summary conviction up to €250,000 and 10 years in prison (or both) for conviction on indictment. At present, there is no provision under which an employer can be charged with a breach of the law.

The Gardai will have the power to enter and search a premises where it is suspected that non-nationals are illegally employed.

The non-nationals who do not need work permits are nationals of EU member states and certain members of their families, refugees i.e. (those who have been declared to be refugees) and people who are allowed to stay in Ireland by the Minister for Justice, Equality and Law Reform under terms that allow them to work without needing a work permit. This last group includes non-national spouses of Irish nationals, people who sought asylum and were refused but were allowed stay in Ireland on humanitarian grounds. It also used to include non-nationals who had Irish born children but such non-nationals no longer have an automatic right to stay.

New EU Member States

The Bill also provides that the nationals of the countries which are set to join the EU in May 2004 will be entitled to work in Ireland without needing a work permit. This means that, from May 2004, nationals of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia will not need work permits.

The Accession treaties under which the new member states will join the EU will be signed on 16 April 2003. These treaties provide that citizens of Malta and Cyprus will have automatic rights to live and work in other member states from the date they join the EU. In the case of the other proposed members, existing member states have a seven year transition period in which to introduce the free movement of workers provisions.

A number of other member states have announced their intention to have full free movement from May 2004 – these are Denmark, the Netherlands, Sweden, Spain, Greece and the UK. Others have not yet decided or have decided to delay the introduction of free movement.

People from these countries hold 35% of the work permits which are currently in use in Ireland.

The Bill allows the government to change these arrangements during the transition period. The Minister for Enterprise, trade and Employment will have the power to re-introduce the requirement to have a work permit if labour market conditions in Ireland require this during the transition period. This may be exercised in respect of any of the countries.

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