



Relate

The journal of developments in social services, policy and legislation in Ireland

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The Act makes a number of changes to the rules governing social welfare payments.

Consumer Protection

The Consumer Protection Act 2007 provides for the establishment of the National Consumer Agency, puts the EU Directive on unfair commercial practices into national law and makes various changes in the consumer laws. It repeals some of the older consumer laws (some of which date from the 19th century).

The National Consumer Agency (NCA) has already been established on an interim basis. The Agency will have a general function of promoting consumer welfare and will be responsible for investigating, enforcing and encouraging compliance with consumer law. It takes over the existing functions and powers of the Director of Consumer Affairs and will have more extensive functions and powers.

The legislation is quite complex and includes detailed definitions. Here we give a summary of its main provisions.

Functions of the National Consumer Agency

The main functions of the Agency are:

- To promote and protect the interests and welfare of consumers
- To enforce the relevant consumer law
- To encourage compliance with the relevant law
- To investigate suspected offences under any of the relevant laws
- To refer cases to the Director of Public Prosecutions where appropriate.

In carrying out its functions, the Agency will be obliged to engage in various activities and will have the power to engage in others. These include the power (and the obligation if requested by the Minister) to advise and make recommendations on any legislation or policy which concerns or is likely to impact on consumer protection and welfare and to make proposals for new legislation. It will be obliged to do the following (among other things):

- Work with and consult consumer groups and representatives and co-operate with other authorities who are concerned with consumer protection

- Promote the development of alternative dispute resolution (ADR) procedures as a means of resolving consumer disputes
- Conduct or commission research (or support voluntary bodies to do this)
- Promote public awareness and conduct public information campaigns for the purpose of educating and advising consumers in relation to consumer protection and welfare (or support voluntary bodies to do this)
- Promote educational initiatives and activities relating to consumer information and awareness and advise, when requested by any Minister or public body or education or training institution (or support voluntary bodies to do this)
- Review and approve relevant codes of practice
- Prepare and publish guidelines to traders
- Promote and encourage the establishment of quality assurance schemes by traders
- Perform the existing functions of the Director of Consumer Affairs.

Co-operation agreements with other bodies

The Agency will be obliged to enter into agreements with certain prescribed bodies for the purposes of facilitating co-operation, avoiding duplication and ensuring that the Agency is consulted about decisions of these bodies which affect consumers. The Minister will prescribe the bodies concerned – they are likely to include, for example, the Commission for Energy Regulation, which makes decisions about electricity and gas prices and Comreg, which regulates the telecommunications industry.

Enforcing consumer legislation

The Agency has the power to appoint authorised officers in order to enforce consumer legislation. The authorised officers who were employed by the Director of Consumer Affairs will transfer to the Agency.

Authorised officers of the Agency will have powers to pursue their investigations. This includes the power to enter premises, get documentation and other evidence in relation to any trade or business which is being investigated, be accompanied by the Gardaí if necessary and apply to the courts for search warrants.

The Agency may exchange relevant information with the Competition Authority, the Gardaí, the Director of Corporate Enforcement, the Revenue Commissioners, the Financial Services Regulatory Authority or other people who may be prescribed.

Unfair Commercial Practices

The EU Unfair Commercial Practices Directive (Directive 2005/28/EC of 11 May 2005) deals with unfair business to consumer commercial practices (it does not apply to dealings between businesses). The Act provides for its implementation in Ireland.

It provides that a range of unfair, misleading and aggressive trading practices are banned if they would be likely to cause appreciable impairment of the average consumer's ability to make an informed choice in relation to the product concerned and cause the average consumer to make a decision about a transaction that the average consumer would not otherwise make. So these practices are banned if they meet two conditions:

- They are unfair, misleading or aggressive and
- They are likely to impair a consumer's choice.

It also provides that certain practices are always banned – these do not have to meet the second condition.

Unfair practices

A commercial practice is considered to be unfair if it is contrary to the requirements of professional diligence. That means it is contrary to the general principle of good faith in the trader's field of activity and/or the standard of skill and care that a trader could reasonably be expected to exercise towards consumers.

Misleading practices

Existing consumer legislation already prohibits some misleading commercial practices, for example, misleading advertisements, but this Act provides for a more extensive list of prohibited practices. The sale of property is not covered by existing legislation but is included in the scope of the Act. The Minister will have the power to make regulations prescribing the sort of information which must be provided with specific products and with specific advertising.

The Act provides that the following commercial practices are misleading:

Products

A commercial practice is misleading if it includes the provision of false information in relation to certain matters or it would be likely to cause the average consumer to be deceived or misled in relation to certain matters.

The matters in question are the existence or nature of a product and its main characteristics: the price; the need for any part, replacement, servicing or repair; the existence, extent or nature of any approval or sponsorship (direct or

indirect) of the product by others; the nature, attributes or rights of the trader; the extent of the trader's commitments; the trader's motives for the commercial practice; the nature of the trader's supply process; the legal rights of a consumer.

The Act gives the Minister the power to make regulations requiring that certain products carry specified information.

Marketing and advertising

A commercial practice involving marketing or advertising is misleading if it would be likely to cause the average consumer to confuse a competitor's product with the trader's product, or a competitor's trade name, trademark or some other distinguishing feature or mark with that of the trader.

Codes of practice

A commercial practice is misleading if it involves a representation that the trader abides, or is bound, by a code of practice and the trader fails to comply with a firm commitment in that code of practice.

Omission of information

A commercial practice is misleading if the trader omits or conceals material information that the average consumer would need to make an informed decision.

Unclear information

A commercial practice is misleading if the trader provides material information in a manner that is unclear, unintelligible, ambiguous or untimely, or fails to identify the commercial intent of the practice.

Payment methods

The Act outlaws the practice of charging consumers more for using different methods of payment. Traders who are prepared to accept payment by two or more of the following: cash, credit card, direct debit or any other prescribed method, may not charge the consumer more for using one such method. So, for example, if it is possible to pay for goods in cash or by credit card, you cannot be charged more for paying by credit card. It will continue to be legal to impose a charge for payment by credit card if there is no alternative method of payment or if the charge applies to all methods of payment but the price quoted must include such a charge.

Aggressive practices

Aggressive commercial practices are defined as practices involving harassment, coercion or undue influence that impair consumers' freedom of choice and affect their purchasing decisions. The Act sets out some examples of aggressive practices but the list is not exhaustive. They include:

- Sales tactics that try to intimidate or coerce consumers
- The use of threatening or abusive behaviour

- Practices that try to take advantage of vulnerable consumers (a vulnerable consumer is one whom the trader could foresee as vulnerable because of mental or physical infirmity, age or credulity)
- The imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to end the contract, exercise a contractual right or switch to another product or trader
- Threats to take legal action when the trader has no basis for such action.

Practices which are always banned

The Act provides that certain commercial practices are always banned, whether or not they would affect a consumer's decision. They include:

- Claims that a product or trader has an endorsement or authorisation that does not exist or that the product or trader is not in compliance with
- False claims that a trader is about to cease trading or move premises
- Prize promotions where there is either no prize or consumers must make a payment in order to claim a prize
- False claims that the supply of a product is legal
- False claims that products can cure illnesses
- Persistent unwanted cold calling
- Creating an impression that a consumer cannot leave the premises until a contract is formed
- Requiring a consumer to produce documents which are irrelevant in the case of an insurance claim or persistently failing to answer a consumer's correspondence in respect of an insurance claim in order to dissuade consumers from exercising their rights under the contract
- Advertisements directly aimed at getting children to buy products or persuade adults to buy for them.

Price display regulations

The Act gives the Minister the power to make regulations requiring that the prices of certain products be displayed in a specific manner. For example, they could provide that prices of certain products must be displayed inclusive of charges, fees and taxes.

Price controls

The Prices Acts 1958-1972 give the Minister for Enterprise, Trade and Employment a range of powers to set maximum prices. The Act provides for the repeal of all of these powers except the power to control prices in emergency situations. It provides that the power to control prices in emergency situations must be exercised by the Government and not the Minister.

Pyramid selling

The existing legislation – the Pyramid Selling Act 1980 – is repealed and replaced by new provisions. These ban participation in pyramid schemes and inducing others to participate, as well as the establishment, operation or promotion of such schemes, and increase the penalties for breaking the law. The new penalties for offences relating to pyramid schemes involve a fine of up to €150,000 and a prison term of up to five years.

Whistleblowers

The Act provides protection for people who report breaches of the legislation to the National Consumer Agency (NCA).

Codes of practice

The Act provides for the recognition of codes of practice drawn up by traders or groups of traders and for the NCA to approve such codes. It also provides that the NCA may issue guidelines to traders about consumer protection and welfare, commercial practices, quality assurance schemes and codes of practice.

Casual trading licences

The Act gives power to the Minister to introduce statutory guidelines for local authorities in regard to the issuing of casual trading licences. Non-statutory guidelines were issued to local authorities in July 2005 and again in July 2006 with a view to their being implemented on a voluntary basis. If this does not prove satisfactory, the Minister intends to introduce statutory guidelines.

Redress for individual consumers

Any person, including the NCA, may apply to the Circuit Court or the High Court for an order prohibiting any practice (with some small exceptions) which is unlawful under the Act. If an individual takes such an action, notice must be given to the trader

and to the NCA. It is not necessary to show loss or damage as a result of the trader's actions.

If a trader is convicted of an offence under the Act, it is open to the court to require the trader to pay damages to a consumer who has suffered loss as a result of the trader's actions. Such a compensation order may be instead of, or in addition to, any fine or penalty the court imposes on the trader.

Consumers who are aggrieved by a prohibited act or practice may sue the trader for damages.

Enforcement – The National Consumer Agency

At present, the Director of Consumer Affairs may either try to get voluntary compliance with the consumer legislation or may take legal action. In the case of misleading practices, the Director could apply to the High Court for an injunction. The Act provides for some other enforcement mechanisms to be available to the NCA.

If the NCA considers that there is a case for looking for an injunction or a prohibition order against a trader in respect of a particular trading practice it may, as a first step, accept a written undertaking from the trader containing whatever terms and conditions the NCA thinks are appropriate. If the trader fails to comply with the undertaking, then the NCA may look for a prohibition order.

The NCA may serve a compliance notice on a trader whom it considers to have engaged in a prohibited activity. The trader has 14 days in which to appeal the notice. If the trader fails to comply, the NCA may take criminal proceedings.

The NCA will have the power to impose on-the-spot penalties for offences relating to the display of prices.

The NCA is required to keep a Consumer Protection List and to publish this list at any time and in any form it considers appropriate. This is a list of traders convicted of criminal offences, subject to court orders, bound by an undertaking, served with a compliance notice, or subject to a fixed payment notice.

The NCA may apply to the courts for an order requiring a trader who has been convicted of a number of specified offences to publish, at his or her expense, a corrective statement in respect of the facts relating to the offence.

Role of the Financial Regulator

The Financial Regulator (Irish Financial Services Regulatory Authority) will have a role in enforcing the provisions of the Act in the financial services area. The NCA and the Financial Regulator will have a co-operation agreement setting out their respective roles.

Penalties

The Act provides for a range of penalties for the various offences. The maximum fine for a first offence is €3,000 for summary convictions and €60,000 for convictions on indictment. There are higher fines for repeat offenders.

Further Information

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Lo-call 1890 432 432

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Finance Act 2007

The Finance Act 2007 gives legislative backing to the changes introduced in the Budget and provides for some other changes. Here we look at the main income tax changes provided for in the Act.

Tax rates and bands 2007

The standard rate of tax remains at 20% and the top rate is reduced to 41%. For the tax year 2007, the 20% rate will be charged on:

- The first €34,000 of taxable income for a single person or a widowed person without dependent children
- The first €38,000 of taxable income for widowed people and other lone parents who qualify for the one-parent family tax credit
- The first €43,000 for a single-income married couple
- The first €68,000 for a two-income couple (provided each earns at least €25,000. If one earns less than this, the standard rate band for the couple is the amount earned by that person plus €43,000).

Exemption limits

The exemption limits for people aged 65 and over are €19,000 for a single person and €38,000 for a married couple.

Tax credits and allowances

The main tax credits for the year 2007 are as follows:

Single personal tax credit	€1,760
Married tax credit	€3,520
Widowed person	€2,310
One-parent family credit	€3,520
Employee tax credit	€1,760
Incapacitated child	€3,000
Age credit	
Single/Widowed	€ 275
Married	€ 550

Widowed parents

There are extra credits for widowed parents in the year of the death and the subsequent 4 years.

Rent and mortgage interest tax reliefs

These reliefs were described in the February 2007 issue of Relate.

Other tax changes

Getting your tax credits and allowances

Generally when you enter the tax system you are allocated your personal tax credits, for example, the single or married credit, the employee credit. You usually have to claim other credits and allowances such as rent credits and tax relief for health expenses. The Act gives the power to the Revenue Commissioners to, where possible, credit and repay automatically tax reliefs such as age-related tax credits, health expenses, tuition fees and trade union subscriptions.

Jobseeker's Benefit

The special tax exemption for Jobseeker's Benefit (formerly called Unemployment Benefit) paid to systematic short-time workers is renewed indefinitely. This had previously been renewed from year to year.

Health expenses

You may qualify for tax relief on certain health expenses including doctor's fees, certain dental expenses and nursing home fees. Until this year the first €125 for a single person and the first €250 for a family did not qualify for this relief. For expenditure incurred for 2007 onwards these thresholds have been abolished. The person who pays the health expenses qualifies for the tax relief. The requirement that that person be related to the person incurring the health expenses has been abolished. A similar change has been made in respect of tuition fees – the person who pays the fees may now qualify for the relief regardless of the relationship with the student.

Rent-a-room relief

If you rent a room in your house and receive rent of less than €7,600 a year, you are not liable for income tax on that income. This scheme will no longer apply to rent being paid by a child to parents in the parental home.

Childminder relief

The income limit for tax exemption for childminders who are caring for up to three children (who are not their own)

in their own home is increased from €10,000 to €15,000 a year. If the income is greater than this, all of it is liable to tax in the normal way.

DIRT

People aged 65 and over whose income is not greater than the tax exemption limits and certain people who are permanently incapacitated may get a refund of DIRT deducted from their savings. The Act provides that DIRT need no longer be deducted in these cases and so the need to claim a refund will not arise. In order to avail of this, older people must make a declaration to the financial institution and incapacitated people must get a statement from the Revenue Commissioners that they qualify. This provision applies from early April 2007.

Private nursing homes

Tax relief may be available for the capital costs involved in building private nursing homes and in building residential units attached to such nursing homes. This relief was due to end in July 2008 but has now been extended to 30 April 2010. There are some further conditions attached to the scheme in relation to the selection of residents for the residential units and some other issues – these new conditions apply from 1 May 2007.

Capital Acquisitions Tax (CAT)

Under certain circumstances, there is no CAT on a gift or inheritance of a family home. This, of course, is the case if you are the spouse or ex-spouse of the deceased but it is also the case if the house was your principal private residence or the principal private residence of the deceased person and:

- You lived in the house for the three years prior to the transfer and
- You do not have an interest in any other residential property and
- You continue to own and live in the house for 6 years after the transfer.

This last condition does not apply if you are aged over 55. Provisions are also made for people who are unable to comply with this condition because of work commitments or illness.

The Finance Act provides that, in the case of the gift of a family home, any period during which you lived in the house before you receive the gift is not regarded as meeting the requirement of living there for three years unless the house owner was dependent on you because of old age or infirmity. The house must also have been owned by the person making the gift for the three years in question. These restrictions do not apply to inheritances.

Social Welfare and Pensions Act 2007

The Social Welfare and Pensions Act 2007 implements some of the changes announced in the Budget and a range of other changes. The main increases in social welfare payments were already provided for in the Social Welfare Act 2006 and came into effect in January 2007. The Act provides for a range of small technical changes in the conditions for various payments. Here we look at the main social welfare changes contained in the Act.

One-Parent Family Payment (OFP)

The upper income limit for the OFP is being increased to €400 a week from May 2007. The Government is planning to introduce a new social assistance payment for low-income families in line with the recommendations in the discussion paper *Proposals for Supporting Lone Parents* which was published in 2006. This payment is being developed at present in the Department of Social and Family Affairs. The Minister has said that it cannot be introduced without the development of co-ordinated supports and services by other departments and agencies. The Senior Officials Group on Social Inclusion has been asked to draw up an implementation plan to progress the non-income recommendations of the discussion paper in order to facilitate the introduction of the new payment scheme.

Qualified Adult Allowance

The Qualified Adult Allowance payable with the State pensions will be paid directly to the qualified adult in new cases from 24 September 2007. This applies to the State Pension (Contributory), State Pension (Transition), and the State Pension (Non-contributory). The qualified adult's entitlement continues for as long as the main pension is payable.

Means test of couples

Some changes are being made in the way couples claiming social assistance payments are means-tested. This concerns couples who are applying for or getting Jobseeker's Allowance (formerly Unemployment Assistance), Farm Assist, Disability Allowance or Pre-retirement Allowance. The details of the means test were described in Relate, July 2006. The Act provides that half the means of the couple are

assessed where the spouse/partner of the person claiming is receiving one of these payments or is taking part in certain courses or schemes.

There is a complex system of disregards for earned income in the case of spouses on Jobseeker's Allowance and it is proposed to change this. At present, if the person applying has income from part-time work and has no dependent children, then €12.70 is disregarded in respect of each day worked and 60% of the rest is taken into account as means. (If you work more than 3 days a week you do not qualify for JA at all.) If the partner has income from employment, then €50 a week is disregarded if he/she works for 3 days a week or less and €100 is disregarded if he/she works for four days or more. This can result in poverty traps at certain levels of income. It also means that there may be no incentive for the partner to take up full-time work or to apply for JA in his/her own right. By remaining a qualified adult rather than an individual claimant of the JA, the person may be unable to access various back to work, education and training schemes. The Act provides that the daily income disregard will be €20 for everyone, whether or not they have dependent children. These changes could result in some couples receiving less income than they do under the present arrangements but there will be a transition arrangement whereby their level of income will be protected. It is not clear when this provision will come into effect.

Carers

As a general rule, a person may not qualify for two social welfare payments at the same time. This has meant that certain social welfare recipients who are providing full-time care are not eligible for the Carer's Allowance. The main people concerned are people receiving State or widow's pensions. This is being changed from September 2007. From then, people who meet the care and means test requirements of the Carer's Allowance will be able to retain their main social welfare payment and qualify for up to half of the Carer's Allowance. It is estimated that about 18,000 carers will benefit.

Deserted Wife's Benefit

Deserted Wife's Benefit has not been available to new claimants since 1997. There are approximately 10,000 women still receiving the benefit. It was awarded on the basis of PRSI contributions but there is also an income limit. That limit is now being set at €20,000. This means that about 2,300 of the current recipients may get an increased payment. When a recipient reaches the income limit, a half-rate payment will be made for 6 months.

Illness Benefit

Illness Benefit (formerly called Disability Benefit) is a PRSI-based benefit for people who are unable to work because

they are ill. In general, you need recently paid contributions in order to qualify. People who are receiving the benefit for a period, then go back to work and become ill again, may find that they qualify only for a reduced rate of payment. The Act provides that, where you have been receiving Illness Benefit for at least two years, return to work for less than 26 weeks and become ill again, you will not get a lower rate of benefit than you were previously receiving.

Similarly, the Act provides that people who have been receiving Carer's Benefit or Carer's Allowance and transfer to Illness Benefit or Jobseeker's Benefit may get a rate of the benefit no lower than was previously in payment.

Maternity Benefit

There are some changes to the Maternity Benefit scheme. The mother's entitlement under the scheme may be paid to the father if the mother dies and it will now be payable even if he does not satisfy the contribution conditions. The benefit will be paid for at least six weeks after the death of the mother. The Act also specifically provides that recipients of Maternity Benefit may not engage in insurable employment or self-employment while getting the payment. This was always understood to be the case but was not actually in the legislation. A similar provision applies to Adoptive Benefit.

Bereavement Grant

A Bereavement Grant will be payable on the death of a child aged between 16 and 22 who has been receiving a Disability Allowance.

Assessment of capital for Disability Allowance

At present, the first €20,000 of capital is disregarded in the means test for all social assistance payments (except Supplementary Welfare Allowance). The Act provides that the first €50,000 of capital will be disregarded for Disability Allowance purposes. After that, the calculation will be as follows:

Between €50,000 and €60,000 is assessed at €1 per €1,000.
Between €60,000 and €70,000 is assessed at €2 per €1,000.
Any amount over €70,000 is assessed at €4 per €1,000.

Assessment of capital for Supplementary Welfare Allowance

The rules for the assessment of capital in the case of weekly SWA are also being changed as follows:

The first €5,000 of capital is disregarded.
Between €5,000 and €15,000 is assessed at €1 per €1,000.
Between €15,000 and €40,000 is assessed at €2 per €1,000.
Any amount over €40,000 is assessed at €4 per €1,000.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

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Rent Supplement

The Act provides for a number of changes to the Rent Supplement scheme.

Rent Supplement may be withheld in respect of accommodation which does not meet local authority housing standards. It may be refused in respect of private rented accommodation located in specified areas of regeneration identified by the Minister for the Environment, Heritage and Local Government, for example, in Ballymun.

This will not apply to people who were already receiving the supplement at the time the area is specified and to certain people who need a rent supplement because of an exceptional change in their circumstances.

People who are assessed as being in need of accommodation under the Rental Accommodation Scheme (RAS) may retain their Rent Supplement if they get full-time work after being unemployed for a year or if they take up Community Employment or a Back to Work scheme.

Some income from employment is disregarded in the means test for Rent Supplement. The Act provides for

the disregard of 50% of additional income, including earnings from employment, to a maximum of €200 per week and subject to a minimum disregard of €75 a week.

Transfer of functions from the HSE

The Act includes provisions to enable the transfer of the income support schemes from the HSE to the DSFA. This is not likely to happen immediately as further legislation will be necessary.

Habitual residence condition

There are no changes in the rules governing the habitual residence condition but the considerations which must be taken into account have been put into primary legislation. They are:

- The length and continuity of residence in the State or in any other particular country
- The length and purpose of any absence from the State
- The nature and pattern of the person's employment
- The person's main centre of interest; and
- The future intentions of the person concerned as they appear from all the circumstances.

Recent publications from the Citizens Information Board

Detailed information about the provisions of Budget 2007 are contained in the Board's *Budget Pack 2007*.

The *Benefits and Taxes 2007* leaflet contains rates of payment and tax details.

Both of these publications are available from your local Citizens Information Centre. You may also view them on the Board's website www.citizensinformationboard.ie



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